

## Calendar No. 460

109TH CONGRESS  
2D SESSION**S. 3274**

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 26, 2006

Mr. SPECTER (for himself and Mr. LEAHY) introduced the following bill;  
which was read the first time

JUNE 5, 2006

Read the second time and placed on the calendar

---

**A BILL**

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Fairness in Asbestos Injury Resolution Act of 2006” or  
6       the “FAIR Act of 2006”.

- 1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Findings and purpose.  
 Sec. 3. Definitions.

#### TITLE I—ASBESTOS CLAIMS RESOLUTION

##### Subtitle A—Office of Asbestos Disease Compensation

- Sec. 101. Establishment of Office of Asbestos Disease Compensation.  
 Sec. 102. Advisory Committee on Asbestos Disease Compensation.  
 Sec. 103. Medical Advisory Committee.  
 Sec. 104. Claimant assistance.  
 Sec. 105. Physicians Panels.  
 Sec. 106. Program startup.  
 Sec. 107. Authority of the Administrator.

##### Subtitle B—Asbestos Disease Compensation Procedures

- Sec. 111. Essential elements of eligible claim.  
 Sec. 112. General rule concerning no-fault compensation.  
 Sec. 113. Filing of claims.  
 Sec. 114. Eligibility determinations and claim awards.  
 Sec. 115. Auditing procedures.

##### Subtitle C—Medical Criteria

- Sec. 121. Medical criteria requirements.

##### Subtitle D—Awards

- Sec. 131. Amount.  
 Sec. 132. Medical monitoring.  
 Sec. 133. Payment.  
 Sec. 134. Setoffs for collateral source compensation and prior awards.  
 Sec. 135. Certain claims not affected by payment of awards.

#### TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

##### Subtitle A—Asbestos Defendants Funding Allocation

- Sec. 201. Definitions.  
 Sec. 202. Authority and tiers.  
 Sec. 203. Subtiers.  
 Sec. 204. Assessment administration.  
 Sec. 205. Stepdowns and funding holidays.  
 Sec. 206. Accounting treatment.

##### Subtitle B—Asbestos Insurers Commission

- Sec. 210. Definition.  
 Sec. 211. Establishment of Asbestos Insurers Commission.  
 Sec. 212. Duties of Asbestos Insurers Commission.  
 Sec. 213. Powers of Asbestos Insurers Commission.  
 Sec. 214. Personnel matters.

- Sec. 215. Termination of Asbestos Insurers Commission.  
 Sec. 216. Expenses and costs of Commission.

Subtitle C—Asbestos Injury Claims Resolution Fund

- Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.  
 Sec. 222. Management of the Fund.  
 Sec. 223. Enforcement of payment obligations.  
 Sec. 224. Interest on underpayment or nonpayment.  
 Sec. 225. Education, consultation, screening, and monitoring.  
 Sec. 226. National Mesothelioma Research and Treatment Program.

TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of rules and regulations.  
 Sec. 302. Judicial review of award decisions.  
 Sec. 303. Judicial review of participants' assessments.  
 Sec. 304. Other judicial challenges.  
 Sec. 305. Stays, exclusivity, and constitutional review.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.  
 Sec. 402. Effect on bankruptcy laws.  
 Sec. 403. Effect on other laws and existing claims.  
 Sec. 404. Effect on insurance and reinsurance contracts.  
 Sec. 405. Annual report of the Administrator and sunset of the Act.  
 Sec. 406. Rules of construction relating to liability of the United States Government.  
 Sec. 407. Rules of construction.  
 Sec. 408. Violations of environmental health and safety requirements.  
 Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

- Sec. 501. Prohibition on asbestos containing products.  
 Sec. 502. Naturally occurring asbestos.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Millions of Americans have been exposed to  
 4 forms of asbestos that can have devastating health  
 5 effects.

6 (2) Various injuries can be caused by exposure  
 7 to some forms of asbestos, including pleural disease  
 8 and some forms of cancer.

1           (3) The injuries caused by asbestos can have la-  
2           tency periods of up to 40 years, and even limited ex-  
3           posure to some forms of asbestos may result in in-  
4           jury in some cases.

5           (4) Asbestos litigation has had a significant  
6           detrimental effect on the country's economy, driving  
7           companies into bankruptcy, diverting resources from  
8           those who are truly sick, and endangering jobs and  
9           pensions.

10          (5) The scope of the asbestos litigation crisis  
11          cuts across every State and virtually every industry.

12          (6) The United States Supreme Court has rec-  
13          ognized that Congress must act to create a more ra-  
14          tional asbestos claims system. In 1991, a Judicial  
15          Conference Ad Hoc Committee on Asbestos Litiga-  
16          tion, appointed by Chief Justice William Rehnquist,  
17          found that the "ultimate solution should be legisla-  
18          tion recognizing the national proportions of the  
19          problem . . . and creating a national asbestos dis-  
20          pute resolution scheme . . .". The Court found in  
21          1997 in *Amchem Products Inc. v. Windsor*, 521  
22          U.S. 591, 595 (1997), that "[t]he argument is sen-  
23          sibly made that a nationwide administrative claims  
24          processing regime would provide the most secure,  
25          fair, and efficient means of compensating victims of

1 asbestos exposure”. In 1999, the Court in *Ortiz v.*  
2 *Fibreboard Corp.*, 527 U.S. 819, 821 (1999), found  
3 that the “elephantine mass of asbestos cases . . . de-  
4 fies customary judicial administration and calls for  
5 national legislation”. That finding was again recog-  
6 nized in 2003 by the Court in *Norfolk & Western*  
7 *Railway Co. v. Ayers*, 123 S. Ct. 1210 (2003).

8 (7) This crisis, and its significant effect on the  
9 health and welfare of the people of the United  
10 States, on interstate and foreign commerce, and on  
11 the bankruptcy system, compels Congress to exercise  
12 its power to regulate interstate commerce and create  
13 this legislative solution in the form of a national as-  
14 bestos injury claims resolution program to supersede  
15 all existing methods to compensate those injured by  
16 asbestos, except as specified in this Act.

17 (8) This crisis has also imposed a deleterious  
18 burden upon the United States bankruptcy courts,  
19 which have assumed a heavy burden of admin-  
20 istering complicated and protracted bankruptcies  
21 with limited personnel.

22 (9) This crisis has devastated many commu-  
23 nities across the country, but hardest hit has been  
24 Libby, Montana, where tremolite asbestos, 1 of the  
25 most deadly forms of asbestos, was contained in the

1 vermiculite ore mined from the area and despite on-  
2 going cleanup by the Environmental Protection  
3 Agency, many still suffer from the deadly dust.

4 (10) The asbestos found in Libby, Montana,  
5 tremolite asbestos, has demonstrated an unusually  
6 high level of toxicity, as compared to chrysotile as-  
7 bestos. Diseases contracted from this tremolite as-  
8 bestos are unique and highly progressive. These dis-  
9 eases typically manifest in a characteristic pleural  
10 disease pattern, and often result in severe impair-  
11 ment or death without radiographic interstitial dis-  
12 ease or typical chrysotile markers of radiographic se-  
13 verity. According to the Agency for Toxic Sub-  
14 stances and Disease Registry previous studies by the  
15 National Institutes of Occupational Safety and  
16 Health document significantly increased rates of pul-  
17 monary abnormalities and disease (asbestosis and  
18 lung cancer) among former workers.

19 (11) Environmental Protection Agency sup-  
20 ported studies have determined that the raw  
21 vermiculite ore mined and milled in Libby, Montana  
22 contained 21 to 26 percent asbestos, by weight. The  
23 milled ore, resulting from the processing in Libby,  
24 which was shipped out of Libby contained markedly  
25 reduced percentages of asbestos. A 1982 Environ-

1        mental Protection Agency-supported study concluded  
2        that ore shipped out of Libby contained 0.3 to 7  
3        percent asbestos, by weight.

4            (12) In Libby, Montana, exposure pathways are  
5        and were not limited to the workplace, rather, for  
6        decades there has been an unprecedented 24 hour  
7        per day contamination of the community's homes,  
8        playgrounds, gardens, and community air, such that  
9        the entire community of Libby, Montana, has been  
10       designated a Superfund site and is listed on the En-  
11       vironmental Protection Agency's National Priorities  
12       List.

13           (13) These multiple exposure pathways have  
14       caused severe asbestos disease and death not only in  
15       former workers at the mine and milling facilities,  
16       but also in the workers' spouses and children, and  
17       in community members who had no direct contact  
18       with the mine. According to the Environmental Pro-  
19       tection Agency, some potentially important alter-  
20       native pathways for past asbestos exposure include  
21       elevated concentrations of asbestos in ambient air  
22       and recreational exposures from children playing in  
23       piles of vermiculite. Furthermore, the Environmental  
24       Protection Agency has determined that current po-  
25       tential pathways of exposure include vermiculite

1 placed in walls and attics as thermal insulation,  
2 vermiculite or ore used as road bed material, ore  
3 used as ornamental landscaping, and vermiculite or  
4 concentrated ore used as a soil and garden amend-  
5 ment or aggregate in driveways.

6 (14) The Environmental Protection Agency also  
7 concluded, “Asbestos contamination exists in a num-  
8 ber of potential source materials at multiple loca-  
9 tions in and around the residential and commercial  
10 area of Libby. . . . While data are not yet sufficient  
11 to perform reliable human-health risk evaluations for  
12 all sources and all types of disturbance, it is appar-  
13 ent that releases of fiber concentrations higher than  
14 Occupational Safety and Health Administration  
15 standards may occur in some cases . . . and that  
16 screening-level estimates of lifetime excess cancer  
17 risk can exceed the upper-bound risk range of 1E–  
18 04 usually used by the Environmental Protection  
19 Agency for residents under a variety of exposure sce-  
20 narios. The occurrence of nonoccupational asbestos-  
21 related disease that has been observed among Libby  
22 residents is extremely unusual, and has not been as-  
23 sociated with asbestos mines elsewhere, suggesting  
24 either very high and prolonged environmental expo-



1       sures and/or increased toxicity of this form of  
2       amphibole asbestos.”.

3           (15) According to a November 2003 article  
4       from the Journal Environmental Health Perspectives  
5       titled, Radiographic Abnormalities and Exposure to  
6       Asbestos-Contaminated Vermiculite in the Commu-  
7       nity of Libby, Montana, USA, Libby residents who  
8       have evidence of “no apparent exposure”, i.e., did  
9       not work with asbestos, were not a family member  
10      of a former worker, etc., had a greater rate of pleu-  
11      ral abnormalities (6.7 percent) than did those in  
12      control groups or general populations found in other  
13      studies from other states (which ranged from 0.2  
14      percent to 4.6 percent). “Given the ubiquitous na-  
15      ture of vermiculite contamination in Libby, along  
16      with historical evidence of elevated asbestos con-  
17      centrations in the air, it would be difficult to find  
18      participants who could be characterized as unex-  
19      posed.”.

20           (16) Nothing in this Act is intended to increase  
21      the Federal deficit or impose any burden on the tax-  
22      payer. The Office of Asbestos Disease Compensation  
23      established under this Act shall be privately funded  
24      by annual payments from defendant participants  
25      that have been subject to asbestos liability and their

1 insurers. Section 406(b) of this Act expressly pro-  
2 vides that nothing in this Act shall be construed to  
3 create any obligation of funding from the United  
4 States or to require the United States to satisfy any  
5 claims if the amounts in the Fund are inadequate.  
6 Any borrowing by the Fund is limited to monies ex-  
7 pected to be paid into the Fund, and the Adminis-  
8 trator shall have no fiscal authority beyond the  
9 amount of private money coming into the Fund.  
10 This Act provides the Administrator with broad en-  
11 forcement authority to pursue debts to the Fund  
12 owed by defendant participants or insurer partici-  
13 pants and their successors in interest.

14 (b) PURPOSE.—The purpose of this Act is to—

15 (1) create a privately funded, publicly adminis-  
16 tered fund to provide the necessary resources for a  
17 fair and efficient system to resolve asbestos injury  
18 claims that will provide compensation for legitimate  
19 present and future claimants of asbestos exposure as  
20 provided in this Act;

21 (2) provide compensation to those present and  
22 future victims based on the severity of their injuries,  
23 while establishing a system flexible enough to accom-  
24 modate individuals whose conditions worsens;

1           (3) relieve the Federal and State courts of the  
2           burden of the asbestos litigation; and

3           (4) increase economic stability by resolving the  
4           asbestos litigation crisis that has bankrupted compa-  
5           nies with asbestos liability, diverted resources from  
6           the truly sick, and endangered jobs and pensions.

7 **SEC. 3. DEFINITIONS.**

8           In this Act, the following definitions shall apply:

9           (1) ADMINISTRATOR.—The term “Adminis-  
10          trator” means the Administrator of the Office of As-  
11          bestos Disease Compensation appointed under sec-  
12          tion 101(b).

13          (2) ASBESTOS.—The term “asbestos” in-  
14          cludes—

15                (A) chrysotile;

16                (B) amosite;

17                (C) crocidolite;

18                (D) tremolite asbestos;

19                (E) winchite asbestos;

20                (F) richterite asbestos;

21                (G) anthophyllite asbestos;

22                (H) actinolite asbestos;

23                (I) asbestiform amphibole minerals;

24                (J) any of the minerals listed under sub-  
25          paragraphs (A) through (I) that has been

1 chemically treated or altered, and any  
2 asbestiform variety, type, or component thereof;  
3 and

4 (K) asbestos-containing material, such as  
5 asbestos-containing products, automotive or in-  
6 dustrial parts or components, equipment, im-  
7 provements to real property, and any other ma-  
8 terial that contains asbestos in any physical or  
9 chemical form.

10 (3) ASBESTOS CLAIM.—

11 (A) IN GENERAL.—The term “asbestos  
12 claim” means any claim, premised on any the-  
13 ory, allegation, or cause of action for damages  
14 or other relief presented in a civil action or  
15 bankruptcy proceeding, directly, indirectly, or  
16 derivatively arising out of, based on, or related  
17 to, in whole or part, the health effects of expo-  
18 sure to asbestos, including loss of consortium,  
19 wrongful death, and any derivative claim made  
20 by, or on behalf of, any exposed person or any  
21 representative, spouse, parent, child, or other  
22 relative of any exposed person.

23 (B) EXCLUSION.—The term does not in-  
24 clude—

- 1 (i) claims alleging damage or injury to  
2 tangible property;
- 3 (ii) claims for benefits under a work-  
4 ers' compensation law or veterans' benefits  
5 program;
- 6 (iii) claims arising under any govern-  
7 mental or private health, welfare, dis-  
8 ability, death or compensation policy, pro-  
9 gram or plan;
- 10 (iv) claims arising under any employ-  
11 ment contract or collective bargaining  
12 agreement;
- 13 (v) claims arising out of medical mal-  
14 practice; or
- 15 (vi) any claim arising under—
  - 16 (I) the Americans with Disabil-  
17 ities Act of 1990 (42 U.S.C. 12101 et  
18 seq.);
  - 19 (II) title VII of the Civil Rights  
20 Act of 1964 (42 U.S.C. 2000e et  
21 seq.);
  - 22 (III) the Age Discrimination in  
23 Employment Act of 1967 (29 U.S.C.  
24 621 et seq.);

1 (IV) the Equal Pay Act of 1963  
2 (29 U.S.C. 206);

3 (V) the Family and Medical  
4 Leave Act of 1993 (29 U.S.C. 2601 et  
5 seq.);

6 (VI) section 1979 of the Revised  
7 Statutes of the United States (42  
8 U.S.C. 1983); or

9 (VII) the Rehabilitation Act of  
10 1973 (29 U.S.C. 701 et seq.).

11 (4) ASBESTOS CLAIMANT.—The term “asbestos  
12 claimant” means an individual who files a claim  
13 under section 113.

14 (5) CIVIL ACTION.—The term “civil action”  
15 means all suits of a civil nature in State or Federal  
16 court, whether cognizable as cases at law or in eq-  
17 uity or in admiralty, but does not include an action  
18 relating to any workers’ compensation law, or a pro-  
19 ceeding for benefits under any veterans’ benefits  
20 program.

21 (6) COLLATERAL SOURCE COMPENSATION.—  
22 The term “collateral source compensation” means  
23 the compensation that the claimant received, or is  
24 entitled to receive, from a defendant or an insurer  
25 of that defendant, or compensation trust as a result

1 of a final judgment or settlement for an asbestos-re-  
2 lated injury that is the subject of a claim filed under  
3 section 113.

4 (7) ELIGIBLE DISEASE OR CONDITION.—The  
5 term “eligible disease or condition” means the extent  
6 that an illness meets the medical criteria require-  
7 ments established under subtitle C of title I.

8 (8) EMPLOYERS’ LIABILITY ACT.—The term  
9 “Act of April 22, 1908 (45 U.S.C. 51 et seq.), com-  
10 monly known as the Employer’s Liability Act” shall,  
11 for all purposes of this Act, include the Act of June  
12 5, 1920 (46 U.S.C. App. 688), commonly known as  
13 the Jones Act, and the related phrase “operations as  
14 a common carrier by railroad” shall include oper-  
15 ations as an employer of seamen.

16 (9) FUND.—The term “Fund” means the As-  
17 bestos Injury Claims Resolution Fund established  
18 under section 221.

19 (10) INSURANCE RECEIVERSHIP PRO-  
20 CEEDING.—The term “insurance receivership pro-  
21 ceeding” means any State proceeding with respect to  
22 a financially impaired or insolvent insurer or rein-  
23 surer including the liquidation, rehabilitation, con-  
24 servation, supervision, or ancillary receivership of an  
25 insurer under State law.

1           (11) LAW.—The term “law” includes all law,  
 2           judicial or administrative decisions, rules, regula-  
 3           tions, or any other principle or action having the ef-  
 4           fect of law.

5           (12) PARTICIPANT.—

6           (A) IN GENERAL.—The term “participant”  
 7           means any person subject to the funding re-  
 8           quirements of title II, including—

9                   (i) any defendant participant subject  
 10                  to liability for payments under subtitle A  
 11                  of that title;

12                  (ii) any insurer participant subject to  
 13                  a payment under subtitle B of that title;  
 14                  and

15                  (iii) any successor in interest of a par-  
 16                  ticipant.

17           (B) EXCEPTION.—

18                   (i) IN GENERAL.—A defendant partic-  
 19                  ipant shall not include any person pro-  
 20                  tected from any asbestos claim by reason  
 21                  of an injunction entered in connection with  
 22                  a plan of reorganization under chapter 11  
 23                  of title 11, United States Code, that has  
 24                  been confirmed by a duly entered order or  
 25                  judgment of a court that is no longer sub-



1           ject to any appeal or judicial review, and  
 2           the substantial consummation, as such  
 3           term is defined in section 1101(2) of title  
 4           11, United States Code, of such plan of re-  
 5           organization has occurred.

6           (ii) APPLICABILITY.—Clause (i) shall  
 7           not apply to a person who may be liable  
 8           under subtitle A of title II based on prior  
 9           asbestos expenditures related to asbestos  
 10          claims that are not covered by an injunc-  
 11          tion described under clause (i).

12       (13) PERSON.—The term “person”—

13           (A) means an individual, trust, firm, joint  
 14           stock company, partnership, association, insur-  
 15           ance company, reinsurance company, or cor-  
 16           poration; and

17           (B) does not include the United States,  
 18           any State or local government, or subdivision  
 19           thereof, including school districts and any gen-  
 20           eral or special function governmental unit es-  
 21           tablished under State law.

22       (14) STATE.—The term “State” means any  
 23       State of the United States and also includes the Dis-  
 24       trict of Columbia, Commonwealth of Puerto Rico,  
 25       the Northern Mariana Islands, the Virgin Islands,

1 Guam, American Samoa, and any other territory or  
2 possession of the United States or any political sub-  
3 division of any of the entities under this paragraph.

4 (15) SUBSTANTIALLY CONTINUES.—The term  
5 “substantially continues” means that the business  
6 operations have not been significantly modified by  
7 the change in ownership.

8 (16) SUCCESSOR IN INTEREST.—The term  
9 “successor in interest” means any person that, in 1  
10 or a series of transactions, acquires all or substan-  
11 tially all of the assets and properties (including,  
12 without limitation, under section 363(b) or  
13 1123(b)(4) of title 11, United States Code), and  
14 substantially continues the business operations, of a  
15 participant. The factors to be considered in deter-  
16 mining whether a person is a successor in interest  
17 include—

18 (A) retention of the same facilities or loca-

19 tion;

20 (B) retention of the same employees;

21 (C) maintaining the same job under the  
22 same working conditions;

23 (D) retention of the same supervisory per-  
24 sonnel;

25 (E) continuity of assets;

1 (F) production of the same product or  
2 offer of the same service;

3 (G) retention of the same name;

4 (H) maintenance of the same customer  
5 base;

6 (I) identity of stocks, stockholders, and di-  
7 rectors between the asset seller and the pur-  
8 chaser; or

9 (J) whether the successor holds itself out  
10 as continuation of previous enterprise, but ex-  
11 pressly does not include whether the person ac-  
12 tually knew of the liability of the participant  
13 under this Act.

14 (17) VETERANS' BENEFITS PROGRAM.—The  
15 term “veterans’ benefits program” means any pro-  
16 gram for benefits in connection with military service  
17 administered by the Veterans’ Administration under  
18 title 38, United States Code.

19 (18) WORKERS' COMPENSATION LAW.—The  
20 term “workers’ compensation law”—

21 (A) means a law respecting a program ad-  
22 ministered by a State or the United States to  
23 provide benefits, funded by a responsible em-  
24 ployer or its insurance carrier, for occupational

1 diseases or injuries or for disability or death  
2 caused by occupational diseases or injuries;

3 (B) includes the Longshore and Harbor  
4 Workers' Compensation Act (33 U.S.C. 901 et  
5 seq.) and chapter 81 of title 5, United States  
6 Code; and

7 (C) does not include the Act of April 22,  
8 1908 (45 U.S.C. 51 et seq.), commonly known  
9 as the Employers' Liability Act, or damages re-  
10 covered by any employee in a liability action  
11 against an employer.

12 (19) CLASS ACTION TRUST.—The term “class  
13 action trust” means a trust or similar entity estab-  
14 lished to hold assets for the payment of asbestos  
15 claims asserted against a debtor or participating de-  
16 fendant, under a settlement that—

17 (A) is a settlement of class action claims  
18 under rule 23 of the Federal Rules of Civil Pro-  
19 cedure; and

20 (B) has been approved by a final judgment  
21 of a United States district court before the date  
22 of enactment of this Act.

23 (20) DEBTOR.—The term “debtor”—

24 (A) means—

1 (i) a person that is subject to a case  
2 pending under a chapter of title 11, United  
3 States Code, on the date of enactment of  
4 this Act or at any time during the 1-year  
5 period immediately preceding that date, ir-  
6 respective of whether the debtor's case  
7 under that title has been dismissed; and

8 (ii) all of the direct or indirect major-  
9 ity-owned subsidiaries of a person de-  
10 scribed under clause (i), regardless of  
11 whether any such majority-owned sub-  
12 sidiary has a case pending under title 11,  
13 United States Code; and

14 (B) shall not include an entity—

15 (i) subject to chapter 7 of title 11,  
16 United States Code, if a final decree clos-  
17 ing the estate shall have been entered be-  
18 fore the date of enactment of this Act; or

19 (ii) subject to chapter 11 of title 11,  
20 United States Code, if a plan of reorga-  
21 nization for such entity shall have been  
22 confirmed by a duly entered order or judg-  
23 ment of a court that is no longer subject  
24 to any appeal or judicial review, and the  
25 substantial consummation, as such term is

1 defined in section 1101(2) of title 11,  
 2 United States Code, of such plan of reor-  
 3 ganization has occurred.

4 (21) TRUST.—The term “trust” means any  
 5 trust, as described in sections 524(g)(2)(B)(i) or  
 6 524(h) of title 11, United States Code, or estab-  
 7 lished in conjunction with an order issued under sec-  
 8 tion 105 of title 11, United States Code, established  
 9 or formed under the terms of a chapter 11 plan of  
 10 reorganization, which in whole or in part provides  
 11 compensation for asbestos claims.

## 12 **TITLE I—ASBESTOS CLAIMS**

### 13 **RESOLUTION**

#### 14 **Subtitle A—Office of Asbestos**

#### 15 **Disease Compensation**

#### 16 **SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DIS-**

#### 17 **EASE COMPENSATION.**

18 (a) IN GENERAL.—

19 (1) ESTABLISHMENT.—There is established  
 20 within the Department of Labor the Office of Asbes-  
 21 tos Disease Compensation (hereinafter referred to in  
 22 this Act as the “Office”), which shall be headed by  
 23 an Administrator.

24 (2) PURPOSE.—The purpose of the Office is to  
 25 provide timely, fair compensation, in the amounts

1 and under the terms specified in this Act, on a no-  
2 fault basis and in a nonadversarial manner, to indi-  
3 viduals whose health has been adversely affected by  
4 exposure to asbestos.

5 (3) TERMINATION OF THE OFFICE.—The Office  
6 of Asbestos Disease Compensation shall terminate  
7 effective not later than 12 months following certifi-  
8 cation by the Administrator that the Fund has nei-  
9 ther paid a claim in the previous 12 months nor has  
10 debt obligations remaining to pay.

11 (4) EXPENSES.—There shall be available from  
12 the Fund to the Administrator such sums as are  
13 necessary for any and all expenses associated with  
14 the Office of Asbestos Disease Compensation and  
15 necessary to carry out the purposes of this Act. Ex-  
16 penses covered should include—

17 (A) management of the Fund;

18 (B) personnel salaries and expenses, in-  
19 cluding retirement and similar benefits;

20 (C) the sums necessary for conducting the  
21 studies required under this Act;

22 (D) all administrative and legal expenses;

23 and

24 (E) any other sum that could be attrib-  
25 utable to the Fund.

1 (b) APPOINTMENT OF ADMINISTRATOR.—

2 (1) IN GENERAL.—The Administrator of the  
3 Office of Asbestos Disease Compensation shall be  
4 appointed by the President, by and with the advice  
5 and consent of the Senate. The Administrator shall  
6 serve for a term of 5 years.

7 (2) REPORTING.—The Administrator shall re-  
8 port directly to the Assistant Secretary of Labor for  
9 the Employment Standards Administration.

10 (c) DUTIES OF ADMINISTRATOR.—

11 (1) IN GENERAL.—The Administrator shall be  
12 responsible for—

13 (A) processing claims for compensation for  
14 asbestos-related injuries and paying compensa-  
15 tion to eligible claimants under the criteria and  
16 procedures established under title I;

17 (B) determining, levying, and collecting as-  
18 sessments on participants under title II;

19 (C) appointing or contracting for the serv-  
20 ices of such personnel, making such expendi-  
21 tures, and taking any other actions as may be  
22 necessary and appropriate to carry out the re-  
23 sponsibilities of the Office, including entering  
24 into cooperative agreements with other Federal



1 agencies or State agencies and entering into  
2 contracts with nongovernmental entities;

3 (D) conducting such audits and additional  
4 oversight as necessary to assure the integrity of  
5 the program;

6 (E) managing the Asbestos Injury Claims  
7 Resolution Fund established under section 221,  
8 including—

9 (i) administering, in a fiduciary capac-  
10 ity, the assets of the Fund for the primary  
11 purpose of providing benefits to asbestos  
12 claimants and their beneficiaries;

13 (ii) defraying the reasonable expenses  
14 of administering the Fund;

15 (iii) investing the assets of the Fund  
16 in accordance with section 222(b);

17 (iv) retaining advisers, managers, and  
18 custodians who possess the necessary fa-  
19 cilities and expertise to provide for the  
20 skilled and prudent management of the  
21 Fund, to assist in the development, imple-  
22 mentation and maintenance of the Fund's  
23 investment policies and investment activi-  
24 ties, and to provide for the safekeeping and  
25 delivery of the Fund's assets; and

1 (v) borrowing amounts authorized by  
2 section 221(b) on appropriate terms and  
3 conditions, including pledging the assets of  
4 or payments to the Fund as collateral;

5 (F) promulgating such rules, regulations,  
6 and procedures as may be necessary and appro-  
7 priate to implement the provisions of this Act;

8 (G) making such expenditures as may be  
9 necessary and appropriate in the administration  
10 of this Act;

11 (H) excluding evidence and disqualifying or  
12 debarring any attorney, physician, provider of  
13 medical or diagnostic services, including labora-  
14 tories and others who provide evidence in sup-  
15 port of a claimant's application for compensa-  
16 tion where the Administrator determines that  
17 materially false, fraudulent, or fictitious state-  
18 ments or practices have been submitted or en-  
19 gaged in by such individuals or entities; and

20 (I) having all other powers incidental, nec-  
21 essary, or appropriate to carrying out the func-  
22 tions of the Office.

23 (2) CERTAIN ENFORCEMENTS.—For each in-  
24 fraction relating to paragraph (1)(H), the Adminis-  
25 trator also may impose a civil penalty not to exceed

1       \$10,000 on any person or entity found to have sub-  
2       mitted or engaged in a materially false, fraudulent,  
3       or fictitious statement or practice under this Act.  
4       The Administrator shall prescribe appropriate regu-  
5       lations to implement paragraph (1)(H).

6           (3) SELECTION OF DEPUTY ADMINISTRA-  
7       TORS.—The Administrator shall select a Deputy Ad-  
8       ministrator for Claims Administration to carry out  
9       the Administrator’s responsibilities under this title  
10      and a Deputy Administrator for Fund Management  
11      to carry out the Administrator’s responsibilities  
12      under title II of this Act. The Deputy Administra-  
13      tors shall report directly to the Administrator and  
14      shall be in the Senior Executive Service.

15      (d) EXPEDITIOUS DETERMINATIONS.—The Adminis-  
16      trator shall prescribe rules to expedite claims for asbestos  
17      claimants with terminal circumstances in order to expedite  
18      the payment of such claims as soon as possible after start-  
19      up of the Fund. The Administrator shall contract out the  
20      processing of such claims.

21      (e) AUDIT AND PERSONNEL REVIEW PROCE-  
22      DURES.—The Administrator shall establish audit and per-  
23      sonnel review procedures for evaluating the accuracy of  
24      eligibility recommendations of agency and contract per-  
25      sonnel.

1 (f) APPLICATION OF FOIA.—

2 (1) IN GENERAL.—Section 552 of title 5,  
3 United States Code (commonly referred to as the  
4 Freedom of Information Act) shall apply to the Of-  
5 fice of Asbestos Disease Compensation and the As-  
6 bestos Insurers Commission.

7 (2) CONFIDENTIALITY OF FINANCIAL  
8 RECORDS.—

9 (A) IN GENERAL.—Any person may label  
10 any record submitted under this section as a  
11 confidential commercial or financial record for  
12 the purpose of requesting exemption from dis-  
13 closure under section 552(b)(4) of title 5,  
14 United States Code.

15 (B) DUTIES OF ADMINISTRATOR AND  
16 CHAIRMAN OF THE ASBESTOS INSURERS COM-  
17 MISSION.—The Administrator and Chairman of  
18 the Asbestos Insurers Commission—

19 (i) shall adopt procedures for—

20 (I) handling submitted records  
21 marked confidential; and

22 (II) protecting from disclosure  
23 records they determine to be confiden-  
24 tial commercial or financial informa-

1                   tion exempt under section 552(b)(4)  
 2                   of title 5, United States Code; and  
 3                   (ii) may establish a pre-submission de-  
 4                   termination process to protect from disclo-  
 5                   sure records on reserves and asbestos-re-  
 6                   lated liabilities submitted by any defendant  
 7                   participant that is exempt under section  
 8                   552(b)(4) of title 5, United States Code.

9                   (C) REVIEW OF COMPLAINTS.—Nothing in  
 10                  this section shall supersede or preempt the de  
 11                  novo review of complaints filed under section  
 12                  552(b)(4) of title 5, United States Code.

13               (3)       CONFIDENTIALITY       OF       MEDICAL  
 14               RECORDS.—Any claimant may designate any record  
 15               submitted under this section as a confidential per-  
 16               sonnel or medical file for purposes of section 552 of  
 17               title 5, United States Code. The Administrator and  
 18               the Chairman of the Asbestos Insurers Commission  
 19               shall adopt procedures for designating such records  
 20               as confidential.

21 **SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE**  
 22 **COMPENSATION.**

23               (a) ESTABLISHMENT.—

24               (1) IN GENERAL.—Not later than 120 days  
 25               after the date of enactment of this Act, the Adminis-

1       trator shall establish an Advisory Committee on As-  
2       bestos Disease Compensation (hereinafter the “Advi-  
3       sory Committee”).

4           (2) COMPOSITION AND APPOINTMENT.—The  
5       Advisory Committee shall be composed of 20 mem-  
6       bers, appointed as follows—

7           (A) The majority and minority leaders of  
8       the Senate, the Speaker of the House, and the  
9       minority leader of the House shall each appoint  
10      4 members. Of the 4—

11           (i) 2 shall be selected to represent the  
12      interests of claimants, at least 1 of whom  
13      shall be selected from among individuals  
14      recommended by recognized national labor  
15      federations; and

16           (ii) 2 shall be selected to represent the  
17      interests of participants, 1 of whom shall  
18      be selected to represent the interests of the  
19      insurer participants and 1 of whom shall  
20      be selected to represent the interests of the  
21      defendant participants.

22           (B) The Administrator shall appoint 4  
23      members, who shall be individuals with quali-  
24      fications and expertise in occupational or pul-  
25      monary medicine, occupational health, workers’

1 compensation programs, financial administra-  
2 tion, investment of funds, program auditing, or  
3 other relevant fields.

4 (3) QUALIFICATIONS.—All of the members de-  
5 scribed in paragraph (2) shall have expertise or ex-  
6 perience relevant to the asbestos compensation pro-  
7 gram, including experience or expertise in diagnosing  
8 asbestos-related diseases and conditions, assessing  
9 asbestos exposure and health risks, filing asbestos  
10 claims, administering a compensation or insurance  
11 program, or as actuaries, auditors, or investment  
12 managers. None of the members described in para-  
13 graph (2)(B) shall be individuals who, for each of  
14 the 5 years before their appointments, earned more  
15 than 15 percent of their income by serving in mat-  
16 ters related to asbestos litigation as consultants or  
17 expert witnesses.

18 (b) DUTIES.—The Advisory Committee shall advise  
19 the Administrator on—

20 (1) claims filing and claims processing proce-  
21 dures;

22 (2) claimant assistance programs;

23 (3) audit procedures and programs to ensure  
24 the quality and integrity of the compensation pro-  
25 gram;

1           (4) the development of a list of industries, occu-  
2           pations and time periods for which there is a pre-  
3           sumption of substantial occupational exposure to as-  
4           bestos;

5           (5) recommended analyses or research that  
6           should be conducted to evaluate past claims and to  
7           project future claims under the program;

8           (6) the annual report required to be submitted  
9           to Congress under section 405; and

10          (7) such other matters related to the implemen-  
11          tation of this Act as the Administrator considers ap-  
12          propriate.

13          (c) OPERATION OF THE COMMITTEE.—

14          (1) Each member of the Advisory Committee  
15          shall be appointed for a term of 3 years, except that,  
16          of the members first appointed—

17                  (A) 6 shall be appointed for a term of 1  
18                  year;

19                  (B) 7 shall be appointed for a term of 2  
20                  years; and

21                  (C) 7 shall be appointed for a term of 3  
22                  years, as determined by the Administrator at  
23                  the time of appointment.



1           (2) Any member appointed to fill a vacancy oc-  
2           curring before the expiration of the term shall be ap-  
3           pointed only for the remainder of such term.

4           (3) The Administrator shall designate a Chair-  
5           person and Vice Chairperson from among members  
6           of the Advisory Committee appointed under sub-  
7           section (a)(2)(B).

8           (4) The Advisory Committee shall meet at the  
9           call of the Chairperson or the majority of its mem-  
10          bers, and at a minimum shall meet at least 4 times  
11          per year during the first 5 years of the asbestos  
12          compensation program, and at least 2 times per year  
13          thereafter.

14          (5) The Administrator shall provide to the  
15          Committee such information as is necessary and ap-  
16          propriate for the Committee to carry out its respon-  
17          sibilities under this section. The Administrator may,  
18          upon request of the Advisory Committee, secure di-  
19          rectly from any Federal, State, or local department  
20          or agency such information as may be necessary and  
21          appropriate to enable the Advisory Committee to  
22          carry out its duties under this section. Upon request  
23          of the Administrator, the head of such department  
24          or agency shall furnish such information to the Advi-  
25          sory Committee.

1           (6) The Administrator shall provide the Advi-  
2       sory Committee with such administrative support as  
3       is reasonably necessary to enable it to perform its  
4       functions.

5       (d) EXPENSES.—Members of the Advisory Com-  
6       mittee, other than full-time employees of the United  
7       States, while attending meetings of the Advisory Com-  
8       mittee or while otherwise serving at the request of the Ad-  
9       ministrator, and while serving away from their homes or  
10      regular places of business, shall be allowed travel and meal  
11      expenses, including per diem in lieu of subsistence, as au-  
12      thorized by section 5703 of title 5, United States Code,  
13      for individuals in the Government serving without pay.

14   **SEC. 103. MEDICAL ADVISORY COMMITTEE.**

15       (a) IN GENERAL.—The Administrator shall establish  
16      a Medical Advisory Committee to provide expert advice re-  
17      garding medical issues arising under the statute.

18       (b) QUALIFICATIONS.—None of the members of the  
19      Medical Advisory Committee shall be individuals who, for  
20      each of the 5 years before their appointments, earned  
21      more than 15 percent of their income by serving in mat-  
22      ters related to asbestos litigation as consultants or expert  
23      witnesses.

1 **SEC. 104. CLAIMANT ASSISTANCE.**

2 (a) ESTABLISHMENT.—Not later than 120 days after  
3 the enactment of this Act, the Administrator shall estab-  
4 lish a comprehensive asbestos claimant assistance program  
5 to—

6 (1) publicize and provide information to poten-  
7 tial claimants about the availability of benefits for  
8 eligible claimants under this Act, and the procedures  
9 for filing claims and for obtaining assistance in fil-  
10 ing claims;

11 (2) provide assistance to potential claimants in  
12 preparing and submitting claims, including assist-  
13 ance in obtaining the documentation necessary to  
14 support a claim and any other appropriate paralegal  
15 assistance;

16 (3) respond to inquiries from claimants and po-  
17 tential claimants;

18 (4) provide training with respect to the applica-  
19 ble procedures for the preparation and filing of  
20 claims to persons who provide assistance or rep-  
21 resentation to claimants; and

22 (5) provide for the establishment of a website  
23 where claimants may access all relevant forms and  
24 information.

25 (b) RESOURCE CENTERS.—The claimant assistance  
26 program shall provide for the establishment of resource

1 centers in areas where there are determined to be large  
2 concentrations of potential claimants. These centers shall  
3 be located, to the extent feasible, in facilities of the De-  
4 partment of Labor or other Federal agencies.

5 (c) CONTRACTS.—The claimant assistance program  
6 may be carried out in part through contracts with labor  
7 organizations, community-based organizations, and other  
8 entities which represent or provide services to potential  
9 claimants, except that such organizations may not have  
10 a financial interest in the outcome of claims filed with the  
11 Office.

12 (d) LEGAL ASSISTANCE.—

13 (1) IN GENERAL.—As part of the program es-  
14 tablished under subsection (a), the Administrator  
15 shall establish a legal assistance program to provide  
16 assistance to asbestos claimants concerning legal  
17 representation issues.

18 (2) LIST OF QUALIFIED ATTORNEYS.—As part  
19 of the program, the Administrator shall maintain a  
20 roster of qualified attorneys who have agreed to pro-  
21 vide pro bono services to asbestos claimants under  
22 rules established by the Administrator. The claim-  
23 ants shall not be required to use the attorneys listed  
24 on such roster.

25 (3) NOTICE.—

1 (A) NOTICE BY ADMINISTRATOR.—The  
 2 Administrator shall provide asbestos claimants  
 3 with notice of, and information relating to—

4 (i) pro bono services for legal assist-  
 5 ance available to those claimants; and

6 (ii) any limitations on attorneys fees  
 7 for claims filed under this title.

8 (B) NOTICE BY ATTORNEYS.—Before a  
 9 person becomes a client of an attorney with re-  
 10 spect to an asbestos claim, that attorney shall  
 11 provide notice to that person of pro bono serv-  
 12 ices for legal assistance available for that claim.

13 (e) ATTORNEY'S FEES.—

14 (1) LIMITATION.—

15 (A) IN GENERAL.—Notwithstanding any  
 16 contract, the representative of an individual  
 17 may not receive, for services rendered in con-  
 18 nection with the claim of an individual under  
 19 the Fund, more than 5 percent of a final mone-  
 20 tary award made (whether by the Administrator  
 21 initially or as a result of administrative review)  
 22 under the Fund on such claim.

23 (B) REVIEW OF PROPOSED DECISION.—

24 (i) REASONABLE FEE.—If an indi-  
 25 vidual seeks a review of a proposed deci-

1 sion in accordance with section 114(d) and  
 2 is awarded compensation, the representa-  
 3 tive of such individual may, in lieu of seek-  
 4 ing payment for services rendered subject  
 5 to the limitation described under subpara-  
 6 graph (A), obtain a reasonable attorney's  
 7 fee to be paid from any compensation re-  
 8 covered by the individual.

9 (ii) CALCULATION OF REASONABLE  
 10 FEE.—Any fee obtained under clause (i)  
 11 shall be calculated by multiplying a reason-  
 12 able hourly rate by the number of hours  
 13 reasonably expended on the claim of the  
 14 individual.

15 (iii) REQUIREMENTS FOR COMPENSA-  
 16 TION.—A representative of an individual  
 17 shall not be eligible to receive a fee under  
 18 clause (i), unless—

19 (I) such representative submits  
 20 to the Administrator detailed contem-  
 21 poraneous billing records for any work  
 22 actually performed in the course of  
 23 representation of an individual;

24 (II) the Administrator finds,  
 25 based on billing records submitted by

1 the representative under subclause (I),  
 2 that the work for which compensation  
 3 is sought was reasonably performed,  
 4 and that the requested hourly fee is  
 5 reasonable; and

6 (III) the claimant seeking a re-  
 7 view of a proposed decision has been  
 8 awarded monetary compensation by  
 9 the Administrator.

10 (iv) NO FEE FOR NO COMPENSA-  
 11 TION.—If the claimant is denied any com-  
 12 pensation after review of the claim, the  
 13 claimant's representative may not receive a  
 14 fee from either the claimant or the Fund.

15 (2) PENALTY.—Any representative of an asbes-  
 16 tos claimant who violates this subsection shall be  
 17 fined not more than the greater of—

18 (A) \$5,000; or

19 (B) twice the amount received by the rep-  
 20 resentative for services rendered in connection  
 21 with each such violation.

22 **SEC. 105. PHYSICIANS PANELS.**

23 (a) APPOINTMENT.—The Administrator shall, in ac-  
 24 cordance with section 3109 of title 5, United States Code,  
 25 appoint physicians with experience and competency in di-

1 agnosing asbestos-related diseases to be available to serve  
2 on Physicians Panels, as necessary to carry out this Act.

3 (b) FORMATION OF PANELS.—

4 (1) IN GENERAL.—The Administrator shall pe-  
5 riodically determine—

6 (A) the number of Physicians Panels nec-  
7 essary for the efficient conduct of the medical  
8 review process under section 121;

9 (B) the number of Physicians Panels nec-  
10 essary for the efficient conduct of the excep-  
11 tional medical claims process under section 121;  
12 and

13 (C) the particular expertise necessary for  
14 each panel.

15 (2) EXPERTISE.—Each Physicians Panel shall  
16 be composed of members having the particular ex-  
17 pertise determined necessary by the Administrator,  
18 randomly selected from among the physicians ap-  
19 pointed under subsection (a) having such expertise.

20 (3) PANEL MEMBERS.—Except as provided  
21 under subparagraph (B), each Physicians Panel  
22 shall consist of 3 physicians, 2 of whom shall be des-  
23 ignated to participate in each case submitted to the  
24 Physicians Panel, and the third of whom shall be  
25 consulted in the event of disagreement.



1       (c) QUALIFICATIONS.—To be eligible to serve on a  
2 Physicians Panel under subsection (a), a person shall be—

3           (1) a physician licensed in any State;

4           (2) board-certified in pulmonary medicine, occu-  
5 pational medicine, internal medicine, oncology, or  
6 pathology; and

7           (3) an individual who, for each of the 5 years  
8 before and during his or her appointment to a Phy-  
9 sicians Panel, has earned not more than 15 percent  
10 of his or her income as an employee of a partici-  
11 pating defendant or insurer or a law firm rep-  
12 resenting any party in asbestos litigation or as a  
13 consultant or expert witness in matters related to  
14 asbestos litigation.

15       (d) DUTIES.—Members of a Physicians Panel shall—

16           (1) make such medical determinations as are  
17 required to be made by Physicians Panels under sec-  
18 tion 121; and

19           (2) perform such other functions as required  
20 under this Act.

21       (e) COMPENSATION.—Notwithstanding any limitation  
22 otherwise established under section 3109 of title 5, United  
23 States Code, the Administrator shall be authorized to pay  
24 members of a Physician Panel such compensation as is  
25 reasonably necessary to obtain their services.

1 (f) FEDERAL ADVISORY COMMITTEE ACT.—A Physi-  
 2 cians Panel established under this section shall not be sub-  
 3 ject to the Federal Advisory Committee Act (5 U.S.C.  
 4 App. 2).

5 **SEC. 106. PROGRAM STARTUP.**

6 (a) IMMEDIATE STARTUP.—

7 (1) IN GENERAL.—Subject to section 101(d),  
 8 the Administrator may—

9 (A) start receiving, reviewing, and deciding  
 10 claims immediately upon the date of enactment  
 11 of this Act; and

12 (B) reimburse the Department of Labor  
 13 from the Fund for any expense incurred—

14 (i) before that date of enactment in  
 15 preparation for carrying out any of the re-  
 16 sponsibilities of the Administrator under  
 17 this Act; and

18 (ii) during the 60-day period following  
 19 that date of enactment to carry out such  
 20 responsibilities.

21 (2) INTERIM REGULATIONS.—Not later than 90  
 22 days after the date of enactment of this Act, the Ad-  
 23 ministrator shall promulgate interim regulations and  
 24 procedures for the processing of claims under this  
 25 title and the operation of the Fund under title II,

1 including procedures for the expediting of terminal  
2 health claims, and processing of claims through the  
3 claims facility.

4 (b) INTERIM PERSONNEL AND CONTRACTING.—The  
5 Secretary of Labor and the Assistant Secretary of Labor  
6 for the Employment Standards Administration shall make  
7 available to the Administrator on a temporary basis such  
8 personnel and other resources as may be necessary to fa-  
9 cilitate the expeditious startup of the program. The Ad-  
10 ministrator may in addition contract with individuals or  
11 entities having relevant experience to assist in the expedi-  
12 tious startup of the program including entering into con-  
13 tracts on an expedited or sole source basis during the  
14 startup period for the purpose of processing claims or pro-  
15 viding financial analysis or assistance. Such relevant expe-  
16 rience shall include, but not be limited to, experience with  
17 the review of workers' compensation, occupational disease,  
18 or similar claims and with financial matters relevant to  
19 the operation of the program.

20 (c) TERMINAL HEALTH CLAIMS.—

21 (1) IN GENERAL.—The Administrator shall de-  
22 velop procedures, as provided in section 106(f), to  
23 provide for an expedited process to categorize, evalu-  
24 ate, and pay terminal health claims. Such proce-  
25 dures, as provided in section 106(f), shall include,

1 pending promulgation of final regulations, adoption  
2 of interim regulations as needed for processing of  
3 terminal health claims.

4 (2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A  
5 claim shall qualify for treatment as a terminal  
6 health claim if—

7 (A) the claimant is living and provides a  
8 diagnosis of mesothelioma meeting the require-  
9 ments of section 121(d)(9);

10 (B) the claimant is living and provides a  
11 credible declaration or affidavit, from a diag-  
12 nosing physician who has examined the claim-  
13 ant within 120 days before the date of such  
14 declaration or affidavit, that the physician has  
15 diagnosed the claimant as being terminally ill  
16 from an asbestos-related illness and having a  
17 life expectancy of less than 1 year due to such  
18 asbestos-related illness; or

19 (C) the claimant is the spouse or child of  
20 an eligible terminal health claimant who—

21 (i) was living when the claim was filed  
22 with the Fund, or if before the implemen-  
23 tation of interim regulations for the filing  
24 of claims with the Fund, on the date of en-  
25 actment of this Act;

1                   (ii) has since died from a malignant  
2                   disease or condition; and

3                   (iii) has not received compensation  
4                   from the Fund for the disease or condition  
5                   for which the claim was filed.

6                   (3) ADDITIONAL TERMINAL HEALTH CLAIMS.—

7                   The Administrator may, in final regulations promul-  
8                   gated under section 101(c), designate additional cat-  
9                   egories of claims that qualify as terminal health  
10                  claims under this subsection except that exceptional  
11                  medical claims may not proceed.

12                 (4) CLAIMS FACILITY.—To facilitate the prompt  
13                  payment of terminal health claims prior to the Fund  
14                  being certified as operational, the Administrator  
15                  shall contract with a claims facility, which applying  
16                  the medical criteria of section 121, shall process and  
17                  pay claims in accordance with section 106(f)(2). The  
18                  processing and payment of claims shall be subject to  
19                  regulations promulgated under this Act.

20                 (5) AUTHORIZATION FOR CONTRACTS WITH  
21                  CLAIMS FACILITIES.—The Administrator may enter  
22                  into contracts with a claims facility for the proc-  
23                  essing of claims (except for exceptional medical  
24                  claims) in accordance with this title.

1       (d) PRIORITIZATION OF CLAIMS.—The Administrator  
2 shall, in final regulations promulgated under section  
3 101(c), designate categories of claims to be handled on  
4 an expedited basis. The Administrator shall prioritize the  
5 processing and payment of health claims involving claim-  
6 ants with the most serious health claims. The Adminis-  
7 trator shall also prioritize claims from claimants who face  
8 extreme financial hardship.

9       (e) INTERIM ADMINISTRATOR.—Until an Adminis-  
10 trator is appointed and confirmed under section 101(b),  
11 the responsibilities of the Administrator under this Act  
12 shall be performed by the Assistant Secretary of Labor  
13 for the Employment Standards Administration, who shall  
14 have all the authority conferred by this Act on the Admin-  
15 istrator and who shall be deemed to be the Administrator  
16 for purposes of this Act. Before final regulations being  
17 promulgated relating to claims processing, the Interim Ad-  
18 ministrator may prioritize claims processing, without re-  
19 gard to the time requirements prescribed in subtitle B of  
20 this title, based on severity of illness and likelihood that  
21 exposure to asbestos was a substantial contributing factor  
22 for the illness in question.

23       (f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

24           (1) STAY OF CLAIMS.—Notwithstanding any  
25 other provision of this Act, any asbestos claim pend-

1       ing on the date of enactment of this Act, other than  
 2       a claim to which section 403(d)(2) applies or as oth-  
 3       erwise provided in section 402(f), stayed.

4               (2) TERMINAL HEALTH CLAIMS.—

5                       (A) PROCEDURES FOR SETTLEMENT OF  
 6       TERMINAL HEALTH CLAIMS.—

7                               (i) IN GENERAL.—Any person that  
 8       has filed a terminal health claim, as pro-  
 9       vided under subsection (c)(2), seeking a  
 10      judgment or order for monetary damages  
 11      in any Federal or State court before the  
 12      date of the enactment of this Act, shall  
 13      seek a settlement in accordance with this  
 14      paragraph. Any person with a terminal  
 15      health claim, as provided under subsection  
 16      (c)(2), that arises after such date of enact-  
 17      ment shall seek a settlement in accordance  
 18      with this paragraph.

19                              (ii) FILING.—

20                                       (I) IN GENERAL.—At any time  
 21      before the Fund or claims facility is  
 22      certified as operational and paying  
 23      terminal health claims at a reasonable  
 24      rate, any person with a terminal  
 25      health claim as described under clause

1 (i) shall file a notice of their intent to  
 2 seek a settlement or shall file their ex-  
 3igent health claim with the Adminis-  
 4trator or claims facility. Filing of an  
 5exigent health claim with the Admin-  
 6istrator or claims facility may serve as  
 7notice of intent to seek a settlement.

8 (II) EXCEPTION.—Any person  
 9 who seeks compensation for an exi-  
 10gent health claim from a trust in ac-  
 11cordance with section 402(f) shall not  
 12be eligible to seek a settlement or set-  
 13tlement offer under this paragraph.

14 (iii) TERMINAL HEALTH CLAIM IN-  
 15FORMATION.—To file a terminal health  
 16claim, each individual shall provide all of  
 17the following information:

18 (I) The amount received or enti-  
 19tled to be received as a result of all  
 20collateral source compensation under  
 21section 134, and copies of all settle-  
 22ment agreements and related docu-  
 23ments sufficient to show the accuracy  
 24of that amount.



1 (II) A description of any claims  
2 for compensation for an asbestos re-  
3 lated injury or disease filed by the  
4 claimant with any trust or class action  
5 trust, and the status or disposition or  
6 any such claims.

7 (III) All information that the  
8 claimant would be required to provide  
9 to the Administrator in support of a  
10 claim under sections 113(c) and 121.

11 (IV) A certification by the claim-  
12 ant that the information provided is  
13 true and complete. The certification  
14 provided under this subclause shall be  
15 subject to the same penalties for false  
16 or misleading statements that would  
17 be applicable with regard to informa-  
18 tion provided to the Administrator or  
19 claims facility in support of a claim.

20 (V) For terminal health claims  
21 arising after the date of enactment of  
22 this Act, the claimant shall identify  
23 each defendant that would be an ap-  
24 propriate defendant in a civil action  
25 seeking damages for the asbestos

1 claim of the claimant. Identification of  
2 all potential participants shall be  
3 made in good faith by the claimant.

4 (iv) TIMING.—A claimant who has  
5 filed a notice of their intent to seek a set-  
6 tlement under clause (ii) shall within 60  
7 days after filing notice provide to the Ad-  
8 ministrator or claims facility the informa-  
9 tion required under clause (iii). If a claim-  
10 ant has filed an exigent health claim under  
11 clause (ii) the Administrator shall provide  
12 all affected defendants the information re-  
13 quired under clause (iii).

14 (v) WEBSITE.—

15 (I) POSTING.—The Adminis-  
16 trator or claims facility shall post the  
17 information described in subclause  
18 (II) to a secure website, accessible on  
19 a passcode-protected basis to partici-  
20 pants.

21 (II) REQUIRED INFORMATION.—  
22 The website established under sub-  
23 clause (I) shall contain a listing of—

24 (aa) each claimant that has  
25 filed a notice of intent to seek a

1 settlement or claim under this  
2 clause;

3 (bb) the name of such claim-  
4 ant; and

5 (cc) if applicable—

6 (AA) the name of the  
7 court where such claim was  
8 filed;

9 (BB) the case or docket  
10 number of such claim; and

11 (CC) the date such  
12 claim was filed.

13 (III) PROHIBITIONS.—The  
14 website established under subclause  
15 (I) shall not contain specific health or  
16 medical information or social security  
17 numbers.

18 (IV) PARTICIPANT ACCESS.—A  
19 participant's access to the website es-  
20 tablished under subclause (I) shall be  
21 limited on a need to know basis, and  
22 participants shall not disclose or sell  
23 data, or retain data for purposes  
24 other than paying an asbestos claim.

1 (V) VIOLATIONS.—Any person or  
 2 other entity that violates any provi-  
 3 sion of this clause, including by  
 4 breaching any data posted on the  
 5 website, shall be subject to an injunc-  
 6 tion, or civil penalties, or both.

7 (vi) ADMINISTRATOR OR CLAIMS FA-  
 8 CILITY CERTIFICATION OF SETTLEMENT.—

9 (I) DETERMINATION.—Within 60  
 10 days after the information under  
 11 clause (iii) is provided, the Adminis-  
 12 trator or claims facility shall deter-  
 13 mine whether or not the claim meets  
 14 the requirements of a terminal health  
 15 claim.

16 (II) REQUIREMENTS MET.—If  
 17 the Administrator or claims facility  
 18 determines that the claim meets the  
 19 requirements of a terminal health  
 20 claim, the Administrator or claims fa-  
 21 cility shall immediately—

22 (aa) issue and serve on all  
 23 parties a certification of eligi-  
 24 bility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

1           (vii) FAILURE TO CERTIFY.—If the  
 2 Administrator or claims facility is unable  
 3 to process the claim and does not make a  
 4 determination regarding the certification of  
 5 the claim as required under clause (vi), the  
 6 Administrator or claims facility shall with-  
 7 in 10 days after the end of the 60-day pe-  
 8 riod referred to under clause (vi)(I) pro-  
 9 vide notice of the failure to act to the  
 10 claimant and the defendants in the pend-  
 11 ing Federal or State court action or the  
 12 defendants identified under clause (iii)(IV).  
 13 If the Administrator or claims facility fails  
 14 to provide such notice within 10 days, the  
 15 claimant may elect to provide the notice to  
 16 the affected defendants to prompt a settle-  
 17 ment offer. The Administrator or claims  
 18 facility shall list all terminal health claims  
 19 for which notice has been provided under  
 20 this clause on the website established  
 21 under clause (v).

22           (viii) FAILURE TO PAY.—If the Ad-  
 23 ministrator or claims facility does not pay  
 24 the award as required under clause (xiii),  
 25 the Administrator shall refer the certified

1 claim within 10 days as a certified ter-  
2 minal health claim to the defendants in the  
3 pending Federal and State court action or  
4 to the potential defendants identified under  
5 clause (iii)(IV) for terminal claims arising  
6 after the date of enactment of this Act.  
7 The Administrator or claims facility shall  
8 list all terminal health claims for which no-  
9 tice has been provided under this clause on  
10 the website established under clause (v).

11 (ix) SETTLEMENT OFFER.—Any par-  
12 ticipant or participants may, within 30  
13 days after receipt of such notice as pro-  
14 vided under clause (vii) or (viii), file and  
15 serve on all parties and the Administrator  
16 a good faith settlement offer in an aggre-  
17 gate amount not to exceed the total  
18 amount to which the claimant would re-  
19 ceive under section 131. If the aggregate  
20 amount offered by all participants exceeds  
21 the award determined by the Adminis-  
22 trator, all offers shall be deemed reduced  
23 pro rata until the aggregate amount equals  
24 the award amount. An acceptance of such  
25 settlement offer for claims pending before

1 the date of enactment of this Act shall be  
2 subject to approval by the trial judge or  
3 authorized magistrate in the court where  
4 the claim is pending. The court shall ap-  
5 prove any such accepted offer within 20  
6 days after a request, unless there is evi-  
7 dence of bad faith or fraud. No court ap-  
8 proval is necessary if the terminal health  
9 claim was certified by the Administrator or  
10 claims facility under clause (vi).

11 (x) ACCEPTANCE OR REJECTION.—

12 Within 20 days after receipt of the settle-  
13 ment offer, or the amended settlement  
14 offer, the claimant shall either accept or  
15 reject such offer in writing. If the amount  
16 of the settlement offer made by the Admin-  
17 istrator, claims facility, or participants  
18 equals 100 percent of what the claimant  
19 would receive under the Fund, the claim-  
20 ant shall accept such settlement in writing.

21 (xi) OPPORTUNITY TO CURE.—If the

22 settlement offer is rejected for being less  
23 than what the claimant would receive  
24 under the Fund, the participants shall  
25 have 10 business days to make an amend-



ed offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made

1 6 months after date the settle-  
2 ment is accepted; or

3 (bb) if the Administrator de-  
4 termines that the payment sched-  
5 ule would impose a severe finan-  
6 cial hardship on the Fund, or if  
7 the court determines that the set-  
8 tlement offer would impose a se-  
9 vere financial hardship on the  
10 participant, the payments may be  
11 extended 50 percent in 6 months  
12 and 50 percent 11 months after  
13 the date the settlement offer is  
14 accepted.

15 (II) OTHER TERMINAL CLAIM-  
16 ANTS.—For other terminal claimants,  
17 as defined under section 106(c)(2)(B)  
18 and (C)—

19 (aa) the initial payment of  
20 50 percent shall be made within  
21 6 months after the date the set-  
22 tlement is accepted and the sec-  
23 ond and final payment shall be  
24 made 12 months after date the  
25 settlement is accepted; or

1 (bb) if the Administrator de-  
2 termines that the payment sched-  
3 ule would impose a severe finan-  
4 cial hardship on the Fund, or if  
5 the court determines that the set-  
6 tlement offer would impose a se-  
7 vere financial hardship on the  
8 participants, the payments may  
9 be extended 50 percent within 1  
10 year after the date the settlement  
11 offer is accepted and 50 percent  
12 in 2 years after date the settle-  
13 ment offer is accepted.

14 (III) RELEASE.—Once a claim-  
15 ant has received final payment of the  
16 accepted settlement offer, and penalty  
17 payment if applicable, the claimant  
18 shall release any outstanding asbestos  
19 claims.

20 (xiii) RECOVERY OF COSTS.—

21 (I) IN GENERAL.—Any partici-  
22 pant whose settlement offer is accept-  
23 ed may recover the cost of such settle-  
24 ment by deducting from the partici-  
25 pant's next and subsequent contribu-

1           tions to the Fund the full amount of  
2           the payment made by such participant  
3           to the terminal health claimant, un-  
4           less the Administrator finds, on the  
5           basis of clear and convincing evidence,  
6           that the participant's offer is not in  
7           good faith. Any such payment shall be  
8           considered a payment to the Fund for  
9           purposes of section 404(e)(1) and in  
10          response to the payment obligations  
11          imposed on participants in title II.

12                   (II) REIMBURSEMENT.—Notwith-  
13          standing subclause (I), if the deduc-  
14          tions from the participant's next and  
15          subsequent contributions to the Fund  
16          do not fully recover the cost of such  
17          payments on or before its third an-  
18          nual contribution to the Fund, the  
19          Fund shall reimburse such participant  
20          for such remaining cost not later than  
21          6 months after the date of the third  
22          scheduled Fund contribution.

23                   (xiv) FAILURE TO MAKE OFFER.—If  
24          participants fail to make a settlement offer  
25          within the 30-day period described under

1 clause (ix) or make amended offers within  
2 the 10 business day cure period described  
3 under clause (xi), the claimant shall be en-  
4 titled to recover 150 percent of what the  
5 claimant would receive under the Fund be-  
6 fore the stay being lifted under subpara-  
7 graph (B).

8 (xv) FAILURE TO PAY.—If a partici-  
9 pant fails to pay an accepted settlement  
10 offer within the payment schedule under  
11 clause (xii), the claimant shall be entitled  
12 to recover 150 percent of what the claim-  
13 ant would receive under the Fund before  
14 the stay being lifted under subparagraph  
15 (B). If the stay is lifted under subpara-  
16 graph (B) the claimant may seek a judg-  
17 ment or order for monetary damages from  
18 the court where the case is currently pend-  
19 ing or the appropriate Federal or State  
20 court for claims arising after the date of  
21 enactment of this Act.

22 (B) STAY TERMINATED AND REVERSION  
23 TO COURT.—If 9 months after a terminal  
24 health claim has been filed under subparagraph  
25 (A), a claimant has not received a settlement

1 under subparagraph (A)(xii) and the Adminis-  
2 trator has not certified to Congress that the  
3 Fund or claims facility is operational and pay-  
4 ing terminal health claims at a reasonable rate,  
5 the stay of claim provided under paragraph (1)  
6 shall be lifted and such terminal health claim-  
7 ant, may immediately seek a judgment or order  
8 for monetary damages from the court where the  
9 case is currently pending or the appropriate  
10 Federal or State court for claims arising after  
11 the date of enactment of this Act. If a claimant  
12 has failed to file a claim or notice of intent to  
13 seek a settlement, as required under subpara-  
14 graph (A)(ii), the provisions of this subpara-  
15 graph shall not apply.

16 (C) CREDIT OF CLAIM AND EFFECT OF  
17 OPERATIONAL FUND.—

18 (i) COLLATERAL SOURCE.—If an as-  
19 bestos claim is pursued in Federal or State  
20 court in accordance with this paragraph,  
21 any recovery by the claimant shall be a col-  
22 lateral source compensation for purposes of  
23 section 134.

24 (ii) RECOVERY OF COSTS.—Any par-  
25 ticipant may recover the cost of any claim

1 continued in court for up to the amount  
2 the claimant would receive under the Fund  
3 by deducting from the participant's next  
4 and subsequent contributions to the Fund  
5 for that amount of the payment made by  
6 such participant to the terminal health  
7 claimant.

8 (3) PURSUAL OF NONTERMINAL ASBESTOS  
9 CLAIMS IN FEDERAL OR STATE COURT.—

10 (A) IN GENERAL.—

11 (i) PURSUAL OF CLAIMS.—Notwith-  
12 standing any other provision of this Act, if  
13 not later than 24 months after the date of  
14 enactment of this Act, the Administrator  
15 cannot certify to Congress that the Fund  
16 is operational and paying all valid claims  
17 at a reasonable rate, any person with a  
18 nonterminal asbestos claim stayed, except  
19 for any person whose claim does not exceed  
20 a Level I claim, may pursue that claim in  
21 the Federal district court (if the claim is  
22 otherwise within the jurisdiction of the  
23 court) or State court located within—

24 (I) the State of residence of the  
25 claimant; or

1 (II) the State in which the asbes-  
2 tos exposure occurred.

3 (ii) RULE OF CONSTRUCTION.—This  
4 subparagraph shall not be construed as  
5 creating a new Federal cause of action.

6 (B) DEFENDANTS NOT FOUND.—If any  
7 defendant cannot be found in the State de-  
8 scribed under subparagraph (A) (i) or (ii), the  
9 claim may be pursued in the Federal district  
10 court or State court located within any State in  
11 which the defendant may be found.

12 (C) DETERMINATION OF MOST APPRO-  
13 PRIATE FORUM.—If a person alleges that the  
14 asbestos exposure occurred in more than 1  
15 county (or Federal district), the trial court shall  
16 determine which State and county (or Federal  
17 district) is the most appropriate forum for the  
18 claim. If the court determines that another  
19 forum would be the most appropriate forum for  
20 a claim, the court shall dismiss the claim. Any  
21 otherwise applicable statute of limitations shall  
22 be tolled beginning on the date the claim was  
23 filed and ending on the date the claim is dis-  
24 missed under this subparagraph.



(D) STATE VENUE REQUIREMENTS.—

Nothing in this paragraph shall preempt or supersede any State law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL OR NONOPERATIONAL FUND.—

(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) OPERATIONAL CERTIFICATION.—Operational certification shall be a filing in the Federal Register confirming that the Fund is capable of operating and paying all valid asbestos claims at a reasonable rate.

(iii) OPERATIONAL PRECONDITIONS.—

(I) The Administrator may not issue a operational certification until—

(aa) 60 days after the funding allocation information re-

1           quired under section 221(e) has  
2           been published in the Federal  
3           Register; and

4                   (bb) insurers subject to sec-  
5           tion 212(a)(3) submit their  
6           names and information to the  
7           Administrator within 30 days  
8           after the date of enactment of  
9           this Act and 60 days after the  
10          Administrator publishes such in-  
11          formation in the Federal Reg-  
12          ister.

13                   (iv) OPERATIONAL FUND.—If the Ad-  
14          ministrator issues an operational certifi-  
15          cation and notifies Congress that the Fund  
16          has become operational and paying all  
17          valid asbestos claims at a reasonable rate,  
18          any nonterminal asbestos claim in a civil  
19          action in Federal or State court that is not  
20          on trial before a jury which has been  
21          impaneled and presentation of evidence has  
22          commenced, but before its deliberation, or  
23          before a judge and is at the presentation  
24          of evidence shall be deemed a reinstated  
25          claim against the Fund and the civil action

1 before the Federal or State court shall be  
2 null and void.

3 (v) NONOPERATIONAL FUND.—Not-  
4 withstanding any other provision of this  
5 Act, if the Administrator subsequently  
6 issues a nonoperational certification and  
7 notifies Congress that the Fund is unable  
8 to become operational and pay all valid as-  
9 bestos claims at a reasonable rate, all as-  
10 bestos claims have been stayed or not filed  
11 may be filed or reinstated in the appro-  
12 priate Federal or State court.

13 (4) RESERVATION OF RIGHTS.—Except as oth-  
14 erwise provided in this Act, participation in the offer  
15 and settlement process under this subsection shall  
16 not affect or prejudice any rights or defenses a party  
17 might have in any litigation.

18 **SEC. 107. AUTHORITY OF THE ADMINISTRATOR.**

19 The Administrator, on any matter within the jurisdic-  
20 tion of the Administrator under this Act, may—

- 21 (1) issue subpoenas for and compel the attend-  
22 ance of witnesses within a radius of 200 miles;  
23 (2) administer oaths;  
24 (3) examine witnesses;

1           (4) require the production of books, papers,  
2 documents, and other evidence; and

3           (5) request assistance from other Federal agen-  
4 cies with the performance of the duties of the Ad-  
5 ministrator under this Act.

6           **Subtitle B—Asbestos Disease**  
7           **Compensation Procedures**

8   **SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.**

9           To be eligible for an award under this Act for an as-  
10 bestos-related disease or injury, an individual shall—

11           (1) file a claim in a timely manner in accord-  
12 ance with sections 106(f)(2) and 113; and

13           (2) prove, by a preponderance of the evidence,  
14 that the claimant suffers from an eligible disease or  
15 condition, as demonstrated by evidence that meets  
16 the requirements established under subtitle C.

17   **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**  
18           **PENSATION.**

19           An asbestos claimant shall not be required to dem-  
20 onstrate that the asbestos-related injury for which the  
21 claim is being made resulted from the negligence or other  
22 fault of any other person.

23   **SEC. 113. FILING OF CLAIMS.**

24           (a) WHO MAY SUBMIT.—

1           (1) IN GENERAL.—Any individual who has suf-  
2       ferred from a disease or condition that is believed to  
3       meet the requirements established under subtitle C  
4       (or the personal representative of the individual, if  
5       the individual is deceased or incompetent) may file  
6       a claim with the Office for an award with respect to  
7       such injury.

8           (2) DEFINITION.—In this Act, the term “per-  
9       sonal representative” shall have the same meaning  
10      as that term is defined in section 104.4 of title 28  
11      of the Code of Federal Regulations, as in effect on  
12      December 31, 2004.

13          (3) LIMITATION.—A claim may not be filed by  
14      any person seeking contribution or indemnity.

15          (4) EFFECT OF MULTIPLE INJURIES.—

16            (A) IN GENERAL.—A claimant who re-  
17      ceives an award for an eligible disease or condi-  
18      tion shall not be precluded from submitting  
19      claims for and receiving additional awards  
20      under this title for any higher disease level for  
21      which the claimant becomes eligible, subject to  
22      appropriate setoffs as provided under section  
23      134.

24            (B) LIBBY, MONTANA CLAIMS.—

1           (i) IN GENERAL.—Notwithstanding  
2           subparagraph (A), if a Libby, Montana  
3           claimant worsens in condition, as measured  
4           by pulmonary function tests, such that a  
5           claimant qualifies for a higher nonmalignant  
6           level, the claimant shall be eligible for  
7           an additional award, at the appropriate  
8           level, offset by any award previously paid  
9           under this Act, such that a claimant would  
10          qualify for Level IV if the claimant satisfies  
11          section 121(f)(8), and would qualify  
12          for Level V if the claimant provides—

13                   (I) a diagnosis of bilateral asbestos  
14                   related nonmalignant disease;

15                   (II) evidence of TLC or FVC less  
16                   than 60 percent; and

17                   (III) supporting medical documentation  
18                   establishing asbestos exposure as a substantial contributing  
19                   factor in causing the pulmonary condition in question,  
20                   and excluding more likely causes of that pulmonary  
21                   condition.  
22                   condition.

23           (ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant de-

1                   velops malignant disease, such that the  
2                   claimant qualifies for Level VI, VII, VIII,  
3                   or IX, subparagraph (A) shall apply.

4       (b) STATUTE OF LIMITATIONS.—

5           (1) IN GENERAL.—If a claim is not filed with  
6       the Office within the limitations period specified in  
7       this subsection for that category of claim, such claim  
8       shall be extinguished, and any recovery thereon shall  
9       be prohibited.

10          (2) INITIAL CLAIMS.—An initial claim for an  
11       award under this Act shall be filed within 5 years  
12       after the date on which the claimant first received  
13       a medical diagnosis and medical test results suffi-  
14       cient to satisfy the criteria for the disease level for  
15       which the claimant is seeking compensation.

16          (3) CLAIMS FOR ADDITIONAL AWARDS.—

17           (A) NONMALIGNANT DISEASES.—If a  
18       claimant has previously filed a timely initial  
19       claim for compensation for any nonmalignant  
20       disease level, there shall be no limitations pe-  
21       riod applicable to the filing of claims by the  
22       claimant for additional awards for higher dis-  
23       ease levels based on the progression of the non-  
24       malignant disease.

1 (B) MALIGNANT DISEASES.—Regardless of  
2 whether the claimant has previously filed a  
3 claim for compensation for any other disease  
4 level, a claim for compensation for a malignant  
5 disease level shall be filed within 5 years after  
6 the claimant first obtained a medical diagnosis  
7 and medical test results sufficient to satisfy the  
8 criteria for the malignant disease level for  
9 which the claimant is seeking compensation.

10 (4) EFFECT ON PENDING CLAIMS.—

11 (A) IN GENERAL.—Subject to subpara-  
12 graphs (C) and (D), if an asbestos claim that  
13 was timely filed within 10 years before the date  
14 of enactment of this Act is pending as of that  
15 date and is preempted under section 403(e), a  
16 claim under this Act for the same disease or  
17 condition may be filed with the Office under  
18 this section not later than 5 years after such  
19 date of enactment.

20 (B) VETERANS.—For purposes of subpara-  
21 graph (A), any person with a timely filed asbes-  
22 tos claim shall include any person who—

23 (i) is a veteran, as that term is de-  
24 fined under section 101(2) of title 38,  
25 United States Code; and



1 (ii) on the date of enactment of this  
2 Act—

3 (I) is receiving benefits for dis-  
4 ability, caused by exposure to asbes-  
5 tos, under sections 1110 (wartime dis-  
6 ability), 1131 (peacetime disability),  
7 or 3102 (training and rehabilitation)  
8 of title 38, United States Code; or

9 (II) has submitted an application  
10 for such benefits to the Department of  
11 Veterans Affairs that is pending or is  
12 on administrative or judicial appeal.

13 (C) SPECIAL RULE.—For purposes of this  
14 paragraph, a claim shall not be treated as pend-  
15 ing with a trust established under title 11,  
16 United States Code, solely because a claimant  
17 whose claim was previously compensated by the  
18 trust has or alleges—

19 (i) a noncontingent right to the pay-  
20 ment of future installments of a fixed  
21 award; or

22 (ii) a contingent right to recover some  
23 additional amount from the trust on the  
24 occurrence of a future event, such as the

reevaluation of the trust's funding adequacy or projected claims experience.

(D) DORMANT CLAIMS.—A claimant shall have the benefit of the special limitations period under subparagraph (A) only if the claimant provides documentation that the claimant has filed a pleading, served a discovery response or request for discovery, or taken other action to prosecute the pending asbestos claim within the 3-year period ending May 25, 2006, except that the failure to take such action to prosecute the pending asbestos claim shall not preclude the application of the special limitations period under subparagraph (A) if the claimant shows either—

(i) that prosecution of the claim was stayed during all or part of the 3-year period ending May 25, 2006, by court order or operation of law; or

(ii) that the claimant has taken reasonable steps to prosecute the claim within the 3-year period ending May 25, 2006, and that the period of inactivity is the result of the ordinary, generally applicable

1                   procedures or practices of the court in  
2                   which such asbestos claim was pending.

3           (c) REQUIRED INFORMATION.—A claim filed under  
4 subsection (a) shall be in such form, and contain such in-  
5 formation in such detail, as the Administrator shall by  
6 regulation prescribe. At a minimum, a claim shall in-  
7 clude—

8                   (1) the name, social security number, gender,  
9                   date of birth, and, if applicable, date of death of the  
10                  claimant;

11                  (2) information relating to the identity of de-  
12                  pendents and beneficiaries of the claimant;

13                  (3) an employment history sufficient to estab-  
14                  lish required asbestos exposure, accompanied by so-  
15                  cial security or other payment records or a signed  
16                  release permitting access to such records;

17                  (4) a description of the asbestos exposure of the  
18                  claimant, including, to the extent known, informa-  
19                  tion on the site, or location of exposure, and dura-  
20                  tion and intensity of exposure;

21                  (5) a description of the tobacco product use his-  
22                  tory of the claimant, including frequency and dura-  
23                  tion;

24                  (6) an identification and description of the as-  
25                  bestos-related diseases or conditions of the claimant,

1 accompanied by a written report by the claimant's  
2 physician with medical diagnoses and x-ray films,  
3 and other test results necessary to establish eligi-  
4 bility for an award under this Act;

5 (7) a description of any prior or pending civil  
6 action or other claim brought by the claimant for as-  
7 bestos-related injury or any other pulmonary, paren-  
8 chymal, or pleural injury, including an identification  
9 of any recovery of compensation or damages through  
10 settlement, judgment, or otherwise; and

11 (8) for any claimant who asserts that he or she  
12 is a nonsmoker or an ex-smoker, as defined in sec-  
13 tion 131, for purposes of an award under Malignant  
14 Level VI, Malignant Level VII, or Malignant Level  
15 VIII, evidence to support the assertion of non-  
16 smoking or ex-smoking, including relevant medical  
17 records.

18 (d) DATE OF FILING.—A claim shall be considered  
19 to be filed on the date that the claimant mails the claim  
20 to the Office, as determined by postmark, or on the date  
21 that the claim is received by the Office, whichever is the  
22 earliest determinable date.

23 (e) INCOMPLETE CLAIMS.—If a claim filed under  
24 subsection (a) is incomplete, the Administrator shall notify  
25 the claimant of the information necessary to complete the

1 claim and inform the claimant of such services as may  
2 be available through the Claimant Assistance Program es-  
3 tablished under section 104 to assist the claimant in com-  
4 pleting the claim. Any time periods for the processing of  
5 the claim shall be suspended until such time as the claim-  
6 ant submits the information necessary to complete the  
7 claim. If such information is not received within 1 year  
8 after the date of such notification, the claim shall be dis-  
9 missed.

10 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**  
11 **AWARDS.**

12 (a) IN GENERAL.—

13 (1) REVIEW OF CLAIMS.—The Administrator  
14 shall, in accordance with this section, determine  
15 whether each claim filed under the Fund or claims  
16 facility satisfies the requirements for eligibility for  
17 an award under this Act and, if so, the value of the  
18 award. In making such determinations, the Adminis-  
19 trator shall consider the claim presented by the  
20 claimant, the factual and medical evidence submitted  
21 by the claimant in support of the claim, the medical  
22 determinations of any Physicians Panel to which a  
23 claim is referred under section 121, and the results  
24 of such investigation as the Administrator may deem

1        necessary to determine whether the claim satisfies  
2        the criteria for eligibility established by this Act.

3            (2) ADDITIONAL EVIDENCE.—The Adminis-  
4        trator may request the submission of medical evi-  
5        dence in addition to the minimum requirements of  
6        section 113(c) if necessary or appropriate to make  
7        a determination of eligibility for an award, in which  
8        case the cost of obtaining such additional informa-  
9        tion or testing shall be borne by the Office.

10        (b) PROPOSED DECISIONS.—Not later than 90 days  
11        after the filing of a claim, the Administrator shall provide  
12        to the claimant (and the claimant’s representative) a pro-  
13        posed decision accepting or rejecting the claim in whole  
14        or in part and specifying the amount of the proposed  
15        award, if any. The proposed decision shall be in writing,  
16        shall contain findings of fact and conclusions of law, and  
17        shall contain an explanation of the procedure for obtaining  
18        review of the proposed decision.

19        (c) PAYMENTS IF NO TIMELY PROPOSED DECI-  
20        SION.—If the Administrator has received a complete claim  
21        and, after the Fund has been certified subject to section  
22        106(f)(3)(E) has not provided a proposed decision to the  
23        claimant under subsection (b) within 180 days after the  
24        filing of the claim, the claim shall be deemed accepted and  
25        the claimant shall be entitled to payment under section

1 133(a)(2). If the Administrator subsequently rejects the  
 2 claim the claimant shall receive no further payments under  
 3 section 133. If the Administrator subsequently rejects the  
 4 claim in part, the Administrator shall adjust future pay-  
 5 ments due the claimant under section 133 accordingly. In  
 6 no event may the Administrator recover amounts properly  
 7 paid under this section from a claimant.

8 (d) REVIEW OF PROPOSED DECISIONS.—

9 (1) RIGHT TO HEARING.—

10 (A) IN GENERAL.—Any claimant not satis-  
 11 fied with a proposed decision of the Adminis-  
 12 trator under subsection (b) shall be entitled, on  
 13 written request made within 90 days after the  
 14 date of the issuance of the decision, to a hear-  
 15 ing on the claim of that claimant before a rep-  
 16 resentative of the Administrator. At the hear-  
 17 ing, the claimant shall be entitled to present  
 18 oral evidence and written testimony in further  
 19 support of that claim.

20 (B) CONDUCT OF HEARING.—When prac-  
 21 ticable, the hearing will be set at a time and  
 22 place convenient for the claimant. In conducting  
 23 the hearing, the representative of the Adminis-  
 24 trator shall not be bound by common law or  
 25 statutory rules of evidence, by technical or for-

1 mal rules of procedure, or by section 554 of  
2 title 5, United States Code, except as provided  
3 by this Act, but shall conduct the hearing in  
4 such manner as to best ascertain the rights of  
5 the claimant. For this purpose, the representa-  
6 tive shall receive such relevant evidence as the  
7 claimant adduces and such other evidence as  
8 the representative determines necessary or use-  
9 ful in evaluating the claim.

10 (C) REQUEST FOR SUBPOENAS.—

11 (i) IN GENERAL.—A claimant may re-  
12 quest a subpoena but the decision to grant  
13 or deny such a request is within the discre-  
14 tion of the representative of the Adminis-  
15 trator. The representative may issue sub-  
16 poenas for the attendance and testimony of  
17 witnesses, and for the production of books,  
18 records, correspondence, papers, or other  
19 relevant documents. Subpoenas are issued  
20 for documents only if such documents are  
21 relevant and cannot be obtained by other  
22 means, and for witnesses only where oral  
23 testimony is the best way to ascertain the  
24 facts.



1           (ii) REQUEST.—A claimant may re-  
2           quest a subpoena only as part of the hear-  
3           ing process. To request a subpoena, the re-  
4           quester shall—

5                   (I) submit the request in writing  
6                   and send it to the representative as  
7                   early as possible, but no later than 30  
8                   days after the date of the original  
9                   hearing request; and

10                  (II) explain why the testimony or  
11                  evidence is directly relevant to the  
12                  issues at hand, and a subpoena is the  
13                  best method or opportunity to obtain  
14                  such evidence because there are no  
15                  other means by which the documents  
16                  or testimony could have been ob-  
17                  tained.

18           (iii) FEES AND MILEAGE.—Any per-  
19           son required by such subpoena to attend as  
20           a witness shall be allowed and paid the  
21           same fees and mileage as are paid wit-  
22           nesses in the district courts of the United  
23           States. Such fees and mileage shall be paid  
24           from the Fund.

1           (2) REVIEW OF WRITTEN RECORD.—In lieu of  
2       a hearing under paragraph (1), any claimant not  
3       satisfied with a proposed decision of the Adminis-  
4       trator shall have the option, on written request made  
5       within 90 days after the date of the issuance of the  
6       decision, of obtaining a review of the written record  
7       by a representative of the Administrator. If such re-  
8       view is requested, the claimant shall be afforded an  
9       opportunity to submit any written evidence or argu-  
10      ment which the claimant believes relevant.

11      (e) FINAL DECISIONS.—

12           (1) IN GENERAL.—If the period of time for re-  
13      questing review of the proposed decision expires and  
14      no request has been filed, or if the claimant waives  
15      any objections to the proposed decision, the Admin-  
16      istrator shall issue a final decision. If such decision  
17      materially differs from the proposed decision, the  
18      claimant shall be entitled to review of the decision  
19      under subsection (d).

20           (2) TIME AND CONTENT.—If the claimant re-  
21      quests review of all or part of the proposed decision  
22      the Administrator shall issue a final decision on the  
23      claim not later than 180 days after the request for  
24      review is received, if the claimant requests a hearing,  
25      or not later than 90 days after the request for re-

1 view is received, if the claimant requests review of  
2 the written record. Such decision shall be in writing  
3 and contain findings of fact and conclusions of law.

4 (f) REPRESENTATION.—A claimant may authorize an  
5 attorney or other individual to represent him or her in any  
6 proceeding under this Act.

7 **SEC. 115. AUDITING PROCEDURES.**

8 (a) IN GENERAL.—

9 (1) DEVELOPMENT.—The Administrator shall  
10 develop methods for auditing and evaluating the  
11 medical and exposure evidence submitted as part of  
12 the claims process. The Administrator may develop  
13 additional methods for auditing and evaluating other  
14 types of evidence or information received by the Ad-  
15 ministrator.

16 (2) REFUSAL TO CONSIDER CERTAIN EVI-  
17 DENCE.—

18 (A) IN GENERAL.—If the Administrator  
19 determines that an audit conducted in accord-  
20 ance with the methods developed under para-  
21 graph (1) demonstrates that the medical evi-  
22 dence submitted by a specific physician or med-  
23 ical facility is not consistent with prevailing  
24 medical practices or the applicable requirements  
25 of this Act, any medical evidence from such

1 physician or facility shall be unacceptable for  
 2 purposes of establishing eligibility for an award  
 3 under this Act.

4 (B) NOTIFICATION.—Upon a determina-  
 5 tion by the Administrator under subparagraph  
 6 (A), the Administrator shall notify the physi-  
 7 cian or medical facility involved of the results of  
 8 the audit. Such physician or facility shall have  
 9 a right to appeal such determination under pro-  
 10 cedures issued by the Administrator.

11 (C) SUBMISSION OF VALID EVIDENCE.—  
 12 Claimants shall be allowed to submit valid evi-  
 13 dence if prior evidence is found unacceptable  
 14 for purposes of establishing eligibility for an  
 15 award under this Act.

16 (b) REVIEW OF CERTIFIED B-READERS.—

17 (1) IN GENERAL.—The Administrator shall pre-  
 18 scribe procedures to randomly evaluate the x-rays  
 19 submitted in support of a statistically significant  
 20 number of claims by independent certified B-readers,  
 21 the cost of which shall be paid by the Fund.

22 (2) DISAGREEMENT.—If an independent cer-  
 23 tified B-reader assigned under paragraph (1) dis-  
 24 agrees with the quality grading or ILO level as-  
 25 signed to an x-ray submitted in support of a claim,

1 the Administrator shall require a review of such x-  
2 rays by a second independent certified B-reader.

3 (3) EFFECT ON CLAIM.—If neither certified B-  
4 reader under paragraph (2) agrees with the quality  
5 grading and the ILO grade level assigned to an x-  
6 ray as part of the claim, the Administrator shall  
7 take into account the findings of the 2 independent  
8 B readers in making the determination on such  
9 claim.

10 (4) CERTIFIED B-READERS.—The Adminis-  
11 trator shall maintain a list of a minimum of 50 cer-  
12 tified B-readers eligible to participate in the inde-  
13 pendent reviews, chosen from all certified B-readers.  
14 When an x-ray is sent for independent review, the  
15 Administrator shall choose the certified B-reader at  
16 random from that list.

17 (5) DISQUALIFICATION.—Any certified B-reader  
18 who has received compensation before the date of  
19 enactment of this Act for assigning an ILO grade  
20 level to an x-ray, where the amount of compensation  
21 depended on the assigned ILO grade level, is dis-  
22 qualified from inclusion on the Administrator's list.

23 (c) SMOKING ASSESSMENT.—

24 (1) IN GENERAL.—

1 (A) RECORDS AND DOCUMENTS.—To aid  
2 in the assessment of the accuracy of claimant  
3 representations as to their smoking status for  
4 purposes of determining eligibility and amount  
5 of award under Malignant Level VI, Malignant  
6 Level VII, or Malignant Level VIII, and excep-  
7 tional medical claims, the Administrator shall  
8 have the authority to obtain relevant records  
9 and documents, including—

10 (i) records of past medical treatment  
11 and evaluation;

12 (ii) affidavits of appropriate individ-  
13 uals;

14 (iii) applications for insurance and  
15 supporting materials; and

16 (iv) employer records of medical ex-  
17 aminations.

18 (B) CONSENT.—The claimant shall provide  
19 consent for the Administrator to obtain such  
20 records and documents where required.

21 (2) REVIEW.—The frequency of review of  
22 records and documents submitted under paragraph  
23 (1)(A) shall be at the discretion of the Adminis-  
24 trator, but shall address at least 5 percent of the

1 claimants asserting status as nonsmokers or ex-  
2 smokers.

3 (3) CONSENT.—

4 (A) IN GENERAL.—The Administrator may  
5 require the performance of blood tests or any  
6 other appropriate medical test, where claimants  
7 assert they are nonsmokers or ex-smokers for  
8 purposes of an award under Malignant Level  
9 VI, VII, or VIII, or as an exceptional medical  
10 claim, the cost of which shall be paid by the  
11 Fund.

12 (B) SERUM COTININE SCREENING.—The  
13 Administrator shall require the performance of  
14 serum cotinine screening on all claimants who  
15 assert they are nonsmokers or ex-smokers for  
16 purposes of an award under Malignant Level  
17 VI, VII, or VIII, or as an exceptional medical  
18 claim, the cost of which shall be paid by the  
19 Fund.

20 (4) PENALTY FOR FALSE STATEMENTS.—Any  
21 false information submitted under this subsection  
22 shall be subject to criminal prosecution or civil pen-  
23 alties as provided under section 1348 of title 18,  
24 United States Code (as added by this Act) and sec-  
25 tion 101(c)(2).

1 (d) PULMONARY FUNCTION TESTING.—The Admin-  
 2 istrator shall develop auditing procedures for pulmonary  
 3 function test results submitted as part of a claim, to en-  
 4 sure that such tests are conducted in accordance with  
 5 American Thoracic Society Criteria, as defined under sec-  
 6 tion 121(a)(13).

## 7 **Subtitle C—Medical Criteria**

### 8 **SEC. 121. MEDICAL CRITERIA REQUIREMENTS.**

9 (a) DEFINITIONS.—In this section, the following defi-  
 10 nitions shall apply:

11 (1) ASBESTOSIS DETERMINED BY PATHOL-  
 12 OGY.—The term “asbestosis determined by pathol-  
 13 ogy” means indications of asbestosis based on the  
 14 pathological grading system for asbestosis described  
 15 in the Special Issues of the Archives of Pathology  
 16 and Laboratory Medicine, “Asbestos-associated Dis-  
 17 eases”, Vol. 106, No. 11, App. 3 (October 8, 1982).

18 (2) BILATERAL ASBESTOS-RELATED NONMALIGNANT  
 19 DISEASE.—The term “bilateral asbestos-re-  
 20 lated nonmalignant disease” means a diagnosis of  
 21 bilateral asbestos-related nonmalignant disease  
 22 based on—

23 (A) an x-ray reading of 1/0 or higher  
 24 based on the ILO grade scale;

25 (B) bilateral pleural plaques;



1 (C) bilateral pleural thickening; or

2 (D) bilateral pleural calcification.

3 (3) BILATERAL PLEURAL DISEASE OF B2.—The  
4 term “bilateral pleural disease of B2” means a chest  
5 wall pleural thickening or plaque with a maximum  
6 width of at least 5 millimeters and a total length of  
7 at least  $\frac{1}{4}$  of the projection of the lateral chest wall.

8 (4) CERTIFIED B-READER.—The term “cer-  
9 tified B-reader” means an individual who is certified  
10 by the National Institute of Occupational Safety and  
11 Health and whose certification by the National Insti-  
12 tute of Occupational Safety and Health is up to  
13 date.

14 (5) DIFFUSE PLEURAL THICKENING.—The  
15 term “diffuse pleural thickening” means blunting of  
16 either costophrenic angle and bilateral pleural plaque  
17 or bilateral pleural thickening.

18 (6) DLCO.—The term “DLCO” means the sin-  
19 gle-breath diffusing capacity of the lung (carbon  
20 monoxide) technique used to measure the volume of  
21 carbon monoxide transferred from the alveoli to  
22 blood in the pulmonary capillaries for each unit of  
23 driving pressure of the carbon monoxide.

24 (7) FEV1.—The term “FEV1” means forced  
25 expiratory volume (1 second), which is the maximal

1 volume of air expelled in 1 second during perform-  
2 ance of the spirometric test for forced vital capacity.

3 (8) FVC.—The term “FVC” means forced vital  
4 capacity, which is the maximal volume of air expired  
5 with a maximally forced effort from a position of  
6 maximal inspiration.

7 (9) ILO GRADE.—The term “ILO grade”  
8 means the radiological ratings for the presence of  
9 lung changes as determined from a chest x-ray, all  
10 as established from time to time by the International  
11 Labor Organization.

12 (10) LOWER LIMITS OF NORMAL.—The term  
13 “lower limits of normal” means the fifth percentile  
14 of healthy populations as defined in the American  
15 Thoracic Society statement on lung function testing  
16 (Amer. Rev. Resp. Disease 1991, 144:1202–1218)  
17 and any future revision of the same statement.

18 (11) NONSMOKER.—The term “nonsmoker”  
19 means a claimant who—

20 (A) never smoked; or

21 (B) has smoked fewer than 100 cigarettes  
22 or the equivalent amount of other tobacco prod-  
23 ucts during the claimant’s lifetime.

1           (12) PO<sub>2</sub>.—The term “PO<sub>2</sub>” means the partial  
 2           pressure (tension) of oxygen, which measures the  
 3           amount of dissolved oxygen in the blood.

4           (13) PULMONARY FUNCTION TESTING.—The  
 5           term “pulmonary function testing” means  
 6           spirometry testing that is in material compliance  
 7           with the quality criteria established by the American  
 8           Thoracic Society and is performed on equipment  
 9           which is in material compliance with the standards  
 10          of the American Thoracic Society for technical qual-  
 11          ity and calibration.

12          (14) SUBSTANTIAL OCCUPATIONAL EXPOSURE  
 13          TO ASBESTOS.—

14               (A) IN GENERAL.—The term “substantial  
 15               occupational exposure” means employment in  
 16               an industry and an occupation where for a sub-  
 17               stantial portion of a normal work year for that  
 18               occupation, the claimant—

19                       (i) handled raw asbestos fibers;

20                       (ii) fabricated asbestos-containing  
 21                       products so that the claimant in the fab-  
 22                       rication process was exposed to raw asbes-  
 23                       tos fibers;

24                       (iii) altered, repaired, or otherwise  
 25                       worked with an asbestos-containing prod-

uct such that the claimant was exposed on  
a regular basis to asbestos fibers; or

(iv) worked in close proximity to other  
workers engaged in the activities described  
under clause (i), (ii), or (iii), such that the  
claimant was exposed on a regular basis to  
asbestos fibers.

(B) REGULAR BASIS.—In this paragraph,  
the term “on a regular basis” means on a fre-  
quent or recurring basis.

(15) TLC.—The term “TLC” means total lung  
capacity, which is the total volume of air in the lung  
after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term “weighted oc-  
cupational exposure” means exposure for a pe-  
riod of years calculated according to the expo-  
sure weighting formula under subparagraphs  
(B) through (E).

(B) MODERATE EXPOSURE.—Subject to  
subparagraph (E), each year that a claimant’s  
primary occupation, during a substantial por-  
tion of a normal work year for that occupation,  
involved working in areas immediate to where  
asbestos-containing products were being in-

1 stalled, repaired, or removed under cir-  
2 cumstances that involved regular airborne emis-  
3 sions of asbestos fibers, shall count as 1 year  
4 of substantial occupational exposure.

5 (C) HEAVY EXPOSURE.—Subject to sub-  
6 paragraph (E), each year that a claimant's pri-  
7 mary occupation, during a substantial portion  
8 of a normal work year for that occupation, in-  
9 volved the direct installation, repair, or removal  
10 of asbestos-containing products such that the  
11 person was exposed on a regular basis to asbes-  
12 tos fibers, shall count as 2 years of substantial  
13 occupational exposure.

14 (D) VERY HEAVY EXPOSURE.—Subject to  
15 subparagraph (E), each year that a claimant's  
16 primary occupation, during a substantial por-  
17 tion of a normal work year for that occupation,  
18 was in primary asbestos manufacturing, a  
19 World War II shipyard, or the asbestos insula-  
20 tion trades, such that the person was exposed  
21 on a regular basis to asbestos fibers, shall count  
22 as 4 years of substantial occupational exposure.

23 (E) DATES OF EXPOSURE.—Each year of  
24 exposure calculated under subparagraphs (B),  
25 (C), and (D) that occurred before 1976 shall be

1 counted at its full value. Each year from 1976  
2 to 1986 shall be counted as  $\frac{1}{2}$  of its value.  
3 Each year after 1986 shall be counted as  $\frac{1}{10}$   
4 of its value.

5 (F) OTHER CLAIMS.—Individuals who do  
6 not meet the provisions of subparagraphs (A)  
7 through (E) and believe their post-1976 or  
8 post-1986 exposures exceeded the Occupational  
9 Safety and Health Administration standard  
10 may submit evidence, documentation, work his-  
11 tory, or other information to substantiate non-  
12 compliance with the Occupational Safety and  
13 Health Administration standard (such as lack  
14 of engineering or work practice controls, or pro-  
15 tective equipment) such that exposures would  
16 be equivalent to exposures before 1976 or 1986,  
17 or to documented exposures in similar jobs or  
18 occupations where control measures had not  
19 been implemented. Claims under this subpara-  
20 graph shall be evaluated on an individual basis  
21 by a Physicians Panel.

22 (b) MEDICAL EVIDENCE.—

23 (1) LATENCY.—Unless otherwise specified, all  
24 diagnoses of an asbestos-related disease for a level  
25 under this section shall be accompanied by—

1 (A) a statement by the physician providing  
2 the diagnosis that at least 10 years have  
3 elapsed between the date of first exposure to as-  
4 bestos or asbestos-containing products and the  
5 diagnosis; or

6 (B) a history of the claimant's exposure  
7 that is sufficient to establish a 10-year latency  
8 period between the date of first exposure to as-  
9 bestos or asbestos-containing products and the  
10 diagnosis.

11 (2) DIAGNOSTIC GUIDELINES.—All diagnoses of  
12 asbestos-related diseases shall be based upon—

13 (A) for disease Levels I through V, in the  
14 case of a claimant who was living at the time  
15 the claim was filed—

16 (i) a physical examination of the  
17 claimant by the physician providing the di-  
18 agnosis;

19 (ii) an evaluation of smoking history  
20 and exposure history before making a diag-  
21 nosis;

22 (iii) an x-ray reading by a certified B-  
23 reader; and

24 (iv) pulmonary function testing in the  
25 case of disease Levels III, IV, and V;

1 (B) for disease Levels I through V, in the  
2 case of a claimant who was deceased at the  
3 time the claim was filed, a report from a physi-  
4 cian based upon a review of the claimant's med-  
5 ical records which shall include—

6 (i) pathological evidence of the non-  
7 malignant asbestos-related disease; or

8 (ii) an x-ray reading by a certified B-  
9 reader;

10 (C) for disease Levels VI through IX, in  
11 the case of a claimant who was living at the  
12 time the claim was filed—

13 (i) a physical examination by the  
14 claimant's physician providing the diag-  
15 nosis; or

16 (ii) a diagnosis of such a malignant  
17 asbestos-related disease, as described in  
18 this section, by a board-certified patholo-  
19 gist; and

20 (D) for disease Levels VI through IX, in  
21 the case of a claimant who was deceased at the  
22 time the claim was filed—

23 (i) a diagnosis of such a malignant as-  
24 bestos-related disease, as described in this



1 section, by a board-certified pathologist;  
2 and  
3 (ii) a report from a physician based  
4 upon a review of the claimant's medical  
5 records.

6 (3) CREDIBILITY OF MEDICAL EVIDENCE.—To  
7 ensure the medical evidence provided in support of  
8 a claim is credible and consistent with recognized  
9 medical standards, a claimant under this title may  
10 be required to submit—

11 (A) x-rays or computerized tomography;  
12 (B) detailed results of pulmonary function  
13 tests;  
14 (C) laboratory tests;  
15 (D) tissue samples;  
16 (E) results of medical examinations;  
17 (F) reviews of other medical evidence; and  
18 (G) medical evidence that complies with  
19 recognized medical standards regarding equip-  
20 ment, testing methods, and procedure to ensure  
21 the reliability of such evidence as may be sub-  
22 mitted.

23 (c) EXPOSURE EVIDENCE.—

24 (1) IN GENERAL.—To qualify for any disease  
25 level, the claimant shall demonstrate—

1 (A) a minimum exposure to asbestos or as-  
 2bestos-containing products;

3 (B) the exposure occurred in the United  
 4 States, its territories or possessions, or while a  
 5 United States citizen, while an employee of an  
 6 entity organized under any Federal or State law  
 7 regardless of location, or while a United States  
 8 citizen while serving on any United States  
 9 flagged or owned ship, provided the exposure  
 10 results from such employment or service; and

11 (C) any additional asbestos exposure re-  
 12 quirement under this section.

13 (2) PROOF OF EXPOSURE.—

14 (A) AFFIDAVITS.—Exposure to asbestos  
 15 sufficient to satisfy the exposure requirements  
 16 for any disease level may be established by a  
 17 detailed and specific affidavit that—

18 (i) is filed by—

19 (I) the claimant; or

20 (II) if the claimant is deceased, a  
 21 coworker or a family member of the  
 22 claimant; and

23 (ii) is found in proceedings under this  
 24 title to be—

1 (I) reasonably reliable, attesting  
2 to the claimant's exposure; and  
3 (II) credible and not contradicted  
4 by other evidence.

5 (B) OTHER PROOF.—Exposure to asbestos  
6 may alternatively be established by invoices,  
7 construction or other similar records, or any  
8 other reasonably reliable and credible evidence.

9 (C) ADDITIONAL EVIDENCE.—The Admin-  
10 istrator may require submission of other or ad-  
11 ditional evidence of exposure, if available, for a  
12 particular claim when determined necessary, as  
13 part of the minimum information required  
14 under section 113(c).

15 (D) EVALUATION.—The Administrator  
16 shall prescribe procedures to randomly evaluate  
17 the affidavits submitted to satisfy the exposure  
18 requirements for any disease level.

19 (3) TAKE HOME EXPOSURE.—

20 (A) IN GENERAL.—A claimant may alter-  
21 natively satisfy the medical criteria require-  
22 ments of this section where a claim is filed by  
23 a person who alleges their exposure to asbestos  
24 was the result of living with a person who, if  
25 the claim had been filed by that person, would

1 have met the exposure criteria for the given dis-  
2 ease level, and the claimant lived with such per-  
3 son for the time period necessary to satisfy the  
4 exposure requirement, for the claimed disease  
5 level.

6 (B) REVIEW.—Except for claims for dis-  
7 ease Level IX (mesothelioma), all claims alleg-  
8 ing take home exposure shall be submitted as  
9 an exceptional medical claim under section  
10 121(g) for review by a Physicians Panel.

11 (4) WAIVER FOR WORKERS AND RESIDENTS OF  
12 LIBBY, MONTANA.—Because of the unique nature of  
13 the asbestos exposure related to the vermiculite min-  
14 ing and milling operations in Libby, Montana, the  
15 Administrator shall waive the exposure requirements  
16 under this subtitle for individuals who worked at the  
17 vermiculite mining and milling facility in Libby,  
18 Montana, or lived or worked within a 20-mile radius  
19 of Libby, Montana, for at least 12 consecutive  
20 months before December 31, 2004. Claimants under  
21 this section shall provide such supporting docu-  
22 mentation as the Administrator shall require.

23 (5) EXPOSURE PRESUMPTIONS.—

24 (A) IN GENERAL.—The Administrator  
25 shall prescribe rules identifying specific indus-

1           tries, occupations within such industries, and  
2           time periods in which workers employed in  
3           those industries and occupations typically had  
4           substantial occupational exposure to asbestos as  
5           defined under section 121(a). Until 5 years  
6           after the Administrator certifies that the Fund  
7           is paying claims at a reasonable rate, the indus-  
8           tries, occupations and time periods identified by  
9           the Administrator shall at a minimum include  
10          those identified in the 2002 Trust Distribution  
11          Process of the Manville Personal Injury Settle-  
12          ment Trust as of January 1, 2005, as indus-  
13          tries, occupations, including proximity, and time  
14          periods in which workers were presumed to  
15          have had significant occupational exposure to  
16          asbestos. Thereafter, the Administrator may by  
17          rule modify or eliminate those exposure pre-  
18          sumptions required to be adopted from the  
19          Manville Personal Injury Settlement Trust, if  
20          there is evidence that demonstrates that the  
21          typical exposure for workers in such industries  
22          and occupations during such time periods did  
23          not constitute substantial occupational exposure  
24          in asbestos.

1 (B) CLAIMANTS ENTITLED TO PRESUMP-  
2 TIONS.—Any claimant who demonstrates  
3 through meaningful and credible evidence that  
4 such claimant was employed during relevant  
5 time periods in industries and occupations iden-  
6 tified under subparagraph (A) shall be entitled  
7 to a presumption that the claimant had sub-  
8 stantial occupational exposure to asbestos dur-  
9 ing those time periods. That presumption shall  
10 not be conclusive, and the Administrator may  
11 find that the claimant does not have substantial  
12 occupational exposure if other information dem-  
13 onstrates that the claimant did not in fact have  
14 substantial occupational exposure during any  
15 part of the relevant time periods.

16 (C) CRITERIA REQUIREMENTS.—Nothing  
17 in subparagraph (A) or (B) shall negate the ex-  
18 posure or medical criteria requirements in sec-  
19 tion 121, for the purpose of receiving com-  
20 pensation from the Fund.

21 (6) PENALTY FOR FALSE STATEMENT.—Any  
22 false information submitted under this subsection  
23 shall be subject to section 1348 of title 18, United  
24 States Code (as added by this Act).

25 (d) ASBESTOS DISEASE LEVELS.—

1           (1) NONMALIGNANT LEVEL I.—To receive Level  
2   I compensation, a claimant shall provide—

3           (A) a diagnosis of bilateral asbestos-related  
4   nonmalignant disease; and

5           (B) evidence of 5 years cumulative occupa-  
6   tional exposure to asbestos.

7           (2) NONMALIGNANT LEVEL II.—To receive  
8   Level II compensation, a claimant shall provide—

9           (A) a diagnosis of bilateral asbestos-related  
10   nonmalignant disease with ILO grade of 1/1 or  
11   greater, and showing small irregular opacities  
12   of shape or size, either ss, st, or tt, and present  
13   in both lower lung zones, or asbestosis deter-  
14   mined by pathology, or blunting of either  
15   costophrenic angle and bilateral pleural plaque  
16   or bilateral pleural thickening of at least grade  
17   B2 or greater, or bilateral pleural disease of  
18   grade B2 or greater;

19          (B) evidence of TLC less than 80 percent  
20   or FVC less than the lower limits of normal,  
21   and FEV1/FVC ratio less than 65 percent;

22          (C) evidence of 5 or more weighted years  
23   of substantial occupational exposure to asbes-  
24   tos; and

1 (D) supporting medical documentation,  
2 such as a written opinion by the examining or  
3 diagnosing physician, according to the diag-  
4 nostic guidelines in section 121(b)(2), estab-  
5 lishing asbestos exposure as a substantial con-  
6 tributing factor in causing the pulmonary con-  
7 dition in question.

8 (3) NONMALIGNANT LEVEL III.—To receive  
9 Level III compensation a claimant shall provide—

10 (A) a diagnosis of bilateral asbestos-related  
11 nonmalignant disease with ILO grade of 1/0 or  
12 greater and showing small irregular opacities of  
13 shape or size, either ss, st, or tt, and present  
14 in both lower lung zones, or asbestosis deter-  
15 mined by pathology, or diffuse pleural thick-  
16 ening, or bilateral pleural disease of B2 or  
17 greater;

18 (B) evidence of TLC less than 80 percent;  
19 FVC less than the lower limits of normal and  
20 FEV1/FVC ratio greater than or equal to 65  
21 percent; or evidence of a decline in FVC of 20  
22 percent or greater, after allowing for the ex-  
23 pected decrease due to aging, and an FEV1/  
24 FVC ratio greater than or equal to 65 percent  
25 documented with a second spirometry;



1 (C) evidence of 5 or more weighted years  
2 of substantial occupational exposure to asbes-  
3 tos; and

4 (D) supporting medical documentation,  
5 such as a written opinion by the examining or  
6 diagnosing physician, according to the diag-  
7 nostic guidelines in section 121(b)(2)—

8 (i) establishing asbestos exposure as a  
9 substantial contributing factor in causing  
10 the pulmonary condition in question; and

11 (ii) excluding other more likely causes,  
12 other than silica, of that pulmonary condi-  
13 tion.

14 (4) NONMALIGNANT LEVEL IV.—To receive  
15 Level IV compensation a claimant shall provide—

16 (A) diagnosis of bilateral asbestos-related  
17 nonmalignant disease with ILO grade of 1/1 or  
18 greater and showing small irregular opacities of  
19 shape or size, either ss, st, or tt, and present  
20 in both lower lung zones, or asbestosis deter-  
21 mined by pathology, or diffuse pleural thick-  
22 ening, or bilateral pleural disease of B2 or  
23 greater;

1 (B) evidence of TLC less than 60 percent  
2 or FVC less than 60 percent, and FEV1/FVC  
3 ratio greater than or equal to 65 percent;

4 (C) evidence of 5 or more weighted years  
5 of substantial occupational exposure to asbestos  
6 before diagnosis; and

7 (D) supporting medical documentation,  
8 such as a written opinion by the examining or  
9 diagnosing physician, according to the diag-  
10 nostic guidelines in section 121(b)(2)—

11 (i) establishing asbestos exposure as a  
12 substantial contributing factor in causing  
13 the pulmonary condition in question; and

14 (ii) excluding other more likely causes,  
15 other than silica, of that pulmonary condi-  
16 tion.

17 (5) NONMALIGNANT LEVEL V.—To receive  
18 Level V compensation a claimant shall provide—

19 (A) diagnosis of bilateral asbestos-related  
20 nonmalignant disease with ILO grade of 1/1 or  
21 greater and showing small irregular opacities of  
22 shape or size, either ss, st, or tt, and present  
23 in both lower lung zones, or asbestosis deter-  
24 mined by pathology, or diffuse pleural thick-

1 ening, or bilateral pleural disease of B2 or  
2 greater;

3 (B)(i) evidence of TLC less than 50 per-  
4 cent or FVC less than 50 percent, and FEV1/  
5 FVC ratio greater than or equal to 65 percent;

6 (ii) DLCO less than 40 percent of pre-  
7 dicted, plus a FEV1/FVC ratio not less than 65  
8 percent; or

9 (iii) PO<sub>2</sub> less than 55 mm/Hg, plus a  
10 FEV1/FVC ratio not less than 65 percent;

11 (C) evidence of 5 or more weighted years  
12 of substantial occupational exposure to asbes-  
13 tos; and

14 (D) supporting medical documentation,  
15 such as a written opinion by the examining or  
16 diagnosing physician, according to the diag-  
17 nostic guidelines in section 121(b)(2)—

18 (i) establishing asbestos exposure as a  
19 substantial contributing factor in causing  
20 the pulmonary condition in question; and

21 (ii) excluding other more likely causes,  
22 other than silica, of that pulmonary condi-  
23 tion.

24 (6) MALIGNANT LEVEL VI.—

1 (A) IN GENERAL.—To receive Level VI  
2 compensation a claimant shall provide—

3 (i) a diagnosis of a primary colorectal,  
4 laryngeal, esophageal, pharyngeal, or stom-  
5 ach cancer on the basis of findings by a  
6 board-certified pathologist;

7 (ii) evidence of a bilateral asbestos-re-  
8 lated nonmalignant disease;

9 (iii) evidence of 15 or more weighted  
10 years of substantial occupational exposure  
11 to asbestos; and

12 (iv) supporting medical documenta-  
13 tion, such as a written opinion by the ex-  
14 amining or diagnosing physician, according  
15 to the diagnostic guidelines in section  
16 121(b)(2), establishing asbestos exposure  
17 as a substantial contributing factor in  
18 causing the cancer in question.

19 (B) REFERRAL TO PHYSICIANS PANEL.—  
20 All claims filed with respect to Level VI under  
21 this paragraph shall be referred to a Physicians  
22 Panel for a determination that it is more prob-  
23 able than not that asbestos exposure was a sub-  
24 stantial contributing factor in causing the other  
25 cancer in question. If the claimant meets the

requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) MALIGNANT LEVEL VII.—

(A) IN GENERAL.—To receive Level VII compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board-certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification by chest x-ray or such diagnostic methodology supported by the findings of the Institute of Medicine under subsection (f);

1 (iii) evidence of 12 or more weighted  
2 years of substantial occupational exposure  
3 to asbestos; and

4 (iv) supporting medical documenta-  
5 tion, such as a written opinion by the ex-  
6 amining or diagnosing physician, according  
7 to the diagnostic guidelines in section  
8 121(b)(2), establishing asbestos exposure  
9 as a substantial contributing factor in  
10 causing the lung cancer in question.

11 (B) PHYSICIANS PANEL.—A claimant filing  
12 a claim relating to Level VII under this para-  
13 graph may request that the claim be referred to  
14 a Physicians Panel for a determination of  
15 whether the claimant qualifies for the disease  
16 category and relevant smoking status. In mak-  
17 ing its determination under this subparagraph,  
18 the Physicians Panel shall consider the inten-  
19 sity and duration of exposure, smoking history,  
20 and the quality of evidence relating to exposure  
21 and smoking. Claimants shall bear the burden  
22 of producing meaningful and credible evidence  
23 of their smoking history as part of their claim  
24 submission.

25 (8) MALIGNANT LEVEL VIII.—

1 (A) IN GENERAL.—To receive Level VIII  
2 compensation, a claimant shall provide a diag-  
3 nosis—

4 (i) of a primary lung cancer disease  
5 on the basis of findings by a board-cer-  
6 tified pathologist;

7 (ii)(I) of—

8 (aa) asbestosis based on a chest  
9 x-ray of at least 1/0 on the ILO scale  
10 and showing small irregular opacities  
11 of shape or size, either ss, st, or tt,  
12 and present in both lower lung zones;  
13 and

14 (bb) 10 or more weighted years  
15 of substantial occupational exposure  
16 to asbestos;

17 (II) of—

18 (aa) asbestosis based on a chest  
19 x-ray of at least 1/1 on the ILO scale  
20 and showing small irregular opacities  
21 of shape or size, either ss, st, or tt,  
22 and present in both lower lung zones;  
23 and

1 (bb) 8 or more weighted years of  
2 substantial occupational exposure to  
3 asbestos;

4 (III) asbestosis determined by pathol-  
5 ogy and 10 or more weighted years of sub-  
6 stantial occupational exposure to asbestos;  
7 or

8 (IV) asbestosis as determined by CT  
9 Scan, the cost of which shall not be borne  
10 by the Fund. The CT Scan must be inter-  
11 preted by a board-certified radiologist and  
12 confirmed by a board-certified radiologist;  
13 and

14 (iii) supporting medical documenta-  
15 tion, such as a written opinion by the ex-  
16 amining or diagnosing physician, according  
17 to the diagnostic guidelines in section  
18 121(b)(2), establishing asbestos exposure  
19 as a substantial contributing factor in  
20 causing the lung cancer in question; and  
21 10 or more weighted years of substantial  
22 occupational exposure to asbestos.

23 (B) PHYSICIANS PANEL.—A claimant filing  
24 a claim with respect to Level VIII under this  
25 paragraph may request that the claim be re-



1           ferred to a Physicians Panel for a determina-  
 2           tion of whether the claimant qualifies for the  
 3           disease category and relevant smoking status.  
 4           In making its determination under this sub-  
 5           paragraph, the Physicians Panel shall consider  
 6           the intensity and duration of exposure, smoking  
 7           history, and the quality of evidence relating to  
 8           exposure and smoking. Claimants shall bear the  
 9           burden of producing meaningful and credible  
 10          evidence of their smoking history as part of  
 11          their claim submission.

12          (9) MALIGNANT LEVEL IX.—To receive Level  
 13          IX compensation, a claimant shall provide—

14                (A) a diagnosis of malignant mesothelioma  
 15                disease on the basis of findings by a board-cer-  
 16                tified pathologist; and

17                (B) credible evidence of identifiable expo-  
 18                sure to asbestos resulting from—

19                   (i) occupational exposure to asbestos;

20                   (ii) exposure to asbestos fibers  
 21                   brought into the home of the claimant by  
 22                   a worker occupationally exposed to asbes-  
 23                   tos;

24                   (iii) exposure to asbestos fibers result-  
 25                   ing from living or working in the proximi-

1           mate vicinity of a factory, shipyard, build-  
2           ing demolition site, or other operation that  
3           regularly released asbestos fibers into the  
4           air due to operations involving asbestos at  
5           that site; or

6                   (iv) other identifiable exposure to as-  
7           bestos fibers, in which case the claim shall  
8           be reviewed by a Physicians Panel under  
9           subsection (g) for a determination of eligi-  
10          bility.

11          (e) INSTITUTE OF MEDICINE STUDY.—Not later  
12          than April 1, 2006, the Institute of Medicine of the Na-  
13          tional Academy of Sciences shall complete a study con-  
14          tracted with the National Institutes of Health to deter-  
15          mine whether there is a causal link between asbestos expo-  
16          sure and other cancers, including colorectal, laryngeal,  
17          esophageal, pharyngeal, and stomach cancers, except for  
18          mesothelioma and lung cancers. The Institute of Medicine  
19          shall issue a report on its findings on causation, which  
20          shall be transmitted to Congress, the Administrator, the  
21          Advisory Committee on Asbestos Disease Compensation or  
22          the Medical Advisory Committee, and the Physicians Pan-  
23          els. The Institute of Medicine report shall be binding on  
24          the Administrator and the Physicians Panels for purposes  
25          of determining whether asbestos exposure is a substantial

1 contributing factor in causing the other cancerous disease  
2 in question under subsection (d)(6). If asbestos is not a  
3 substantial contributing factor to the particular cancerous  
4 disease under subsection (d)(6), subsection (d)(6) shall  
5 not apply with respect to that disease and no claim may  
6 be filed with, or award paid from, the Fund with respect  
7 to that disease under malignant Level VI.

8 (f) INSTITUTE OF MEDICINE STUDY ON CT  
9 SCANS.—

10 (1) IN GENERAL.—Not later than April 1,  
11 2006, the Institute of Medicine of the National  
12 Academy of Sciences shall complete a study con-  
13 tracted with the National Institutes of Health of the  
14 use of CT scans as a diagnostic tool for bilateral  
15 pleural plaques, bilateral pleural thickening, or bilat-  
16 eral pleural calcification.

17 (2) FINDINGS.—The Institute of Medicine shall  
18 make and issue findings based on the study required  
19 under paragraph (1) on whether—

20 (A) CT scans are generally accepted in the  
21 medical profession to detect bilateral pleural  
22 plaques, bilateral pleural thickening, or bilateral  
23 pleural calcification; and

24 (B) professional standards of practice exist  
25 to allow for the Administrator's reasonable reli-

1           ance on such as evidence of bilateral pleural  
2           plaques, bilateral pleural thickening, or bilateral  
3           pleural calcification under the Fund.

4           (3) REPORT.—The Institute of Medicine shall  
5           issue a report on the findings required under para-  
6           graph (2), which shall be transmitted to Congress,  
7           the Administrator, the Advisory Committee on As-  
8           bestos Disease Compensation or the Medical Advi-  
9           sory Committee, and the Physicians Panels.

10          (4) REPORT BINDING ON THE ADMINIS-  
11          TRATOR.—The Institute of Medicine report required  
12          under paragraph (3) shall be binding on the Admin-  
13          istrator and the Physicians Panels for purposes of  
14          determining reliable and acceptable evidence that  
15          may be submitted for a Level VII claim under sub-  
16          section (d)(7).

17          (g) EXCEPTIONAL MEDICAL CLAIMS.—

18           (1) IN GENERAL.—A claimant who does not  
19           meet the medical criteria requirements under this  
20           section may apply for designation of the claim as an  
21           exceptional medical claim.

22           (2) APPLICATION.—When submitting an appli-  
23           cation for review of an exceptional medical claim, the  
24           claimant shall—

1 (A) state that the claim does not meet the  
 2 medical criteria requirements under this sec-  
 3 tion; or

4 (B) seek designation as an exceptional  
 5 medical claim within 60 days after a determina-  
 6 tion that the claim is ineligible solely for failure  
 7 to meet the medical criteria requirements under  
 8 subsection (d).

9 (3) REPORT OF PHYSICIAN.—

10 (A) IN GENERAL.—Any claimant applying  
 11 for designation of a claim as an exceptional  
 12 medical claim shall support an application filed  
 13 under paragraph (1) with a report from a phy-  
 14 sician meeting the requirements of this section.

15 (B) CONTENTS.—A report filed under sub-  
 16 paragraph (A) shall include—

17 (i) a complete review of the claimant's  
 18 medical history and current condition;

19 (ii) such additional material by way of  
 20 analysis and documentation as shall be  
 21 prescribed by rule of the Administrator;  
 22 and

23 (iii) a detailed explanation as to why  
 24 the claim meets the requirements of para-  
 25 graph (4)(B).

1 (4) REVIEW.—

2 (A) IN GENERAL.—The Administrator  
3 shall refer all applications and supporting docu-  
4 mentation submitted under paragraph (2) to a  
5 Physicians Panel for review for eligibility as an  
6 exceptional medical claim.

7 (B) STANDARD.—A claim shall be des-  
8 ignated as an exceptional medical claim if the  
9 claimant, for reasons beyond the control of the  
10 claimant, cannot satisfy the requirements under  
11 this section, but is able, through comparably re-  
12 liable evidence that meets the standards under  
13 this section, to show that the claimant has an  
14 asbestos-related condition that is substantially  
15 comparable to that of a medical condition that  
16 would satisfy the requirements of a category  
17 under this section.

18 (C) ADDITIONAL INFORMATION.—A Physi-  
19 cians Panel may request additional reasonable  
20 testing to support the claimant's application.

21 (D) CT SCAN.—A claimant may submit a  
22 CT Scan in addition to an x-ray.

23 (E) MESOTHELIOMA CASES.—

24 (i) IN GENERAL.—The Physicals  
25 Panel shall grant priority status to—

1 (I) all Level IX claims with other  
2 identifiable asbestos exposure as pro-  
3 vided under paragraph (9)(B)(iv); and

4 (II) all Level IX claims that are  
5 filed as exceptional medical claims.

6 (ii) PHYSICIAN PANEL.—If the Physi-  
7 cians Panel issues a certificate of medical  
8 eligibility, the claimant shall be deemed to  
9 qualify for Level IX compensation. If the  
10 Physicians Panel rejects the claim, and the  
11 Administrator deems it rejected, the claim-  
12 ant may immediately seek judicial review  
13 under section 302.

14 (5) APPROVAL.—

15 (A) IN GENERAL.—If the Physicians Panel  
16 determines that the medical evidence is suffi-  
17 cient to show a comparable asbestos-related  
18 condition, it shall issue a certificate of medical  
19 eligibility designating the category of asbestos-  
20 related injury under this section for which the  
21 claimant shall be eligible to seek compensation.

22 (B) REFERRAL.—Upon the issuance of a  
23 certificate under subparagraph (A), the Physi-  
24 cians Panel shall submit the claim to the Ad-  
25 ministrator, who shall give due consideration to

1           the recommendation of the Physicians Panel in  
2           determining whether the claimant meets the re-  
3           quirements for compensation under this Act.

4           (6) RESUBMISSION.—Any claimant whose appli-  
5           cation for designation as an exceptional medical  
6           claim is rejected may resubmit an application if new  
7           evidence becomes available. The application shall  
8           identify any prior applications and state the new evi-  
9           dence that forms the basis of the resubmission.

10          (7) RULES.—The Administrator shall promul-  
11          gate rules governing the procedures for seeking des-  
12          ignation of a claim as an exceptional medical claim.

13          (8) LIBBY, MONTANA.—

14                (A) IN GENERAL.—A Libby, Montana,  
15                claimant may elect to have the claimant's  
16                claims designated as exceptional medical claims  
17                and referred to a Physicians Panel for review.  
18                In reviewing the medical evidence submitted by  
19                a Libby, Montana claimant in support of that  
20                claim, the Physicians Panel shall take into con-  
21                sideration the unique and serious nature of as-  
22                bestos exposure in Libby, Montana, including  
23                the nature of the pleural disease related to as-  
24                bestos exposure in Libby, Montana.



1 (B) CLAIMS.—For all claims for Levels II  
2 through IV filed by Libby, Montana claimants,  
3 as described under subsection (c)(4), once the  
4 Administrator or the Physicians Panel issues a  
5 certificate of medical eligibility to a Libby,  
6 Montana claimant, and notwithstanding the dis-  
7 ease category designated in the certificate or  
8 the eligible disease or condition established in  
9 accordance with this section, or the value of the  
10 award determined in accordance with section  
11 114, the Libby, Montana claimant shall be enti-  
12 tled to an award that is not less than that  
13 awarded to claimants who suffer from asbes-  
14 tosis, Level IV. For all malignant claims filed  
15 by Libby, Montana claimants, the Libby, Mon-  
16 tana claimant shall be entitled to an award that  
17 corresponds to the malignant disease category  
18 designated by the Administrator or the Physi-  
19 cians Panel.

20 (C) EVALUATION OF CLAIMS.—For pur-  
21 poses of evaluating exceptional medical claims  
22 from Libby, Montana, a claimant shall be  
23 deemed to have a comparable asbestos-related  
24 condition to an asbestos disease category Level  
25 IV, and shall be deemed to qualify for com-

1           pensation at Level IV, if the claimant pro-  
2           vides—

3                   (i) a diagnosis of bilateral asbestos re-  
4                   lated nonmalignant disease;

5                   (ii) evidence of TLC or FVC less than  
6                   80 percent; and

7                   (iii) supporting medical documenta-  
8                   tion establishing asbestos exposure as a  
9                   substantial contributing factor in causing  
10                  the pulmonary condition in question, and  
11                  excluding more likely causes of that pul-  
12                  monary condition.

13           (9) STUDY OF VERMICULITE PROCESSING FA-  
14           CILITIES.—

15                   (A) IN GENERAL.—As part of the ongoing  
16                   National Asbestos Exposure Review (in this  
17                   section referred to as “NAER”) being con-  
18                   ducted by the Agency for Toxic Substances and  
19                   Disease Registry (in this section referred to as  
20                   “ATSDR”) of facilities that received  
21                   vermiculite ore from Libby, Montana, the  
22                   ATSDR shall conduct a study of all Phase 1  
23                   sites where—

24                           (i) the Environmental Protection  
25                           Agency has mandated further action at the

1 site on the basis of current contamination;  
2 or

3 (ii) the site was an exfoliation facility  
4 that processed roughly 100,000 tons or  
5 more of vermiculite from the Libby mine.

6 (B) STUDY BY ATSDR.—The study by the  
7 ATSDR shall evaluate the facilities identified  
8 under subparagraph (A) and compare—

9 (i) the levels of asbestos emissions  
10 from such facilities;

11 (ii) the resulting asbestos contamina-  
12 tion in areas surrounding such facilities;

13 (iii) the levels of exposure to residents  
14 living in the vicinity of such facilities;

15 (iv) the risks of asbestos-related dis-  
16 ease to the residents living in the vicinity  
17 of such facilities; and

18 (v) the risk of asbestos-related mor-  
19 tality to residents living in the vicinity of  
20 such facilities,

21 to the emissions, contamination, exposures, and  
22 risks resulting from the mining of vermiculite  
23 ore in Libby, Montana.

24 (C) RESULTS OF STUDY.—The results of  
25 the study required under this paragraph shall

1 be transmitted to the Administrator. If the  
2 ATSDR finds as a result of such study that, for  
3 any particular facility, the levels of emissions  
4 from, the resulting contamination caused by,  
5 the levels of exposure to nearby residents from,  
6 and the risks of asbestos-related disease and as-  
7 bestos-related mortality to nearby residents  
8 from such facility are substantially equivalent  
9 to those of Libby, Montana, then the Adminis-  
10 trator shall treat claims from residents sur-  
11 rounding such facilities the same as claims of  
12 residents of Libby, Montana, and such residents  
13 shall have all the rights of residents of Libby,  
14 Montana, under this Act. As part of the results  
15 of its study, the ATSDR shall prescribe for any  
16 such facility the relevant geographic and tem-  
17 poral criteria under which the exposures and  
18 risks to the surrounding residents are substan-  
19 tially equivalent to those of residents of Libby,  
20 Montana, and therefore qualify for treatment  
21 under this paragraph.

22 (10) NATURALLY OCCURRING ASBESTOS.—A  
23 claimant who has been exposed to naturally occur-  
24 ring asbestos may file an exceptional medical claim  
25 with the Fund.

1           (11) ASBESTOS EXPOSURE AS THE RESULT OF  
2           A NATURAL OR OTHER DISASTER.—

3           (A) IN GENERAL.—A claimant may file an  
4           exceptional medical claim with the Fund if such  
5           claimant has been exposed to asbestos in any  
6           area that is subject to a declaration by the  
7           President of a major disaster, as defined under  
8           section 102 of the Robert T. Stafford Disaster  
9           Relief and Emergency Assistance Act (42  
10          U.S.C. 5122), as the result of—

11                  (i) the attack on the World Trade  
12                  Center in New York, New York on Sep-  
13                  tember 11, 2001; or

14                  (ii) Hurricane Katrina or Hurricane  
15                  Rita of 2005 in the Gulf Region of the  
16                  United States.

17          (B) REVIEW OF EVIDENCE.—In reviewing  
18          medical evidence submitted by a claimant under  
19          subparagraph (A)(i) or (ii), the Physicians  
20          Panel shall take into consideration the unique  
21          nature of these disasters and the potential for  
22          asbestos exposure resulting from these disas-  
23          ters.

24          (h) GUIDELINES FOR CT SCANS.—The Adminis-  
25          trator shall commission the American College of Radiology

1 to develop, in consultation with the American Thoracic So-  
 2 ciety, American College of Chest Physicians, and Institute  
 3 of Medicine, guidelines and a methodology for the use of  
 4 CT scans as a diagnostic tool for bilateral pleural plaques,  
 5 bilateral pleural thickening, or bilateral pleural calcifi-  
 6 cation under the Fund. After development, such guidelines  
 7 and methodology shall be used for diagnostic purposes  
 8 under the Fund.

## 9 **Subtitle D—Awards**

### 10 **SEC. 131. AMOUNT.**

11 (a) IN GENERAL.—An asbestos claimant who meets  
 12 the requirements of section 111 shall be entitled to an  
 13 award in an amount determined by reference to the benefit  
 14 table and the matrices developed under subsection (b).

15 (b) BENEFIT TABLE.—

16 (1) IN GENERAL.—An asbestos claimant with  
 17 an eligible disease or condition established in accord-  
 18 ance with section 121 shall be eligible for an award  
 19 as determined under this subsection. The award for  
 20 all asbestos claimants with an eligible disease or con-  
 21 dition established in accordance with section 121  
 22 shall be according to the following schedule:

<b>Level</b>	<b>Scheduled Condi- tion or Disease</b>	<b>Scheduled Value</b>
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	\$25,000

III	Asbestosis/Pleural Disease B	\$100,000
IV	Severe Asbestosis	\$400,000
V	Disabling Asbestosis	\$850,000
VI	Other Cancer	\$200,000
VII	Lung Cancer With Pleural Disease	smokers, \$300,000; ex-smokers, \$725,000; nonsmokers, \$800,000
VIII	Lung Cancer With As- bestosis	smokers, \$600,000; ex-smokers, \$975,000; nonsmokers, \$1,100,000
IX	Mesothelioma	\$1,100,000

1           (2) DEFINITIONS.—In this section—

2                   (A) the term “nonsmoker” means a claim-  
3           ant who—

4                           (i) never smoked; or

5                           (ii) has smoked fewer than 100 ciga-  
6           rettes or the equivalent of other tobacco  
7           products during the claimant’s lifetime;  
8           and

9                   (B) the term “ex-smoker” means a claim-  
10           ant who has not smoked during any portion of  
11           the 12-year period preceding the diagnosis of  
12           lung cancer.

13           (3) LEVEL IX ADJUSTMENTS.—

14                   (A) IN GENERAL.—The Administrator may  
15           increase awards for Level IX claimants who  
16           have dependent children so long as the increase  
17           under this paragraph is cost neutral. Such in-  
18           creased awards shall be paid for by decreasing  
19           awards for claimants other than Level IX, so

1 long as no award levels are decreased more  
2 than 10 percent.

3 (B) IMPLEMENTATION.—Before making  
4 adjustments under this paragraph, the Admin-  
5 istrator shall publish in the Federal Register  
6 notice of, and a plan for, making such adjust-  
7 ments.

8 (4) SPECIAL ADJUSTMENT FOR FELA CASES.—

9 (A) IN GENERAL.—A claimant who would  
10 be eligible to bring a claim under the Act of  
11 April 22, 1908 (45 U.S.C. 51 et seq.), com-  
12 monly known as the Employers' Liability Act,  
13 but for section 403 of this Act, shall be eligible  
14 for a special adjustment under this paragraph.

15 (B) REGULATIONS.—

16 (i) IN GENERAL.—Not later than 90  
17 days after the date of enactment of this  
18 Act, the Administrator shall promulgate  
19 regulations relating to special adjustments  
20 under this paragraph.

21 (ii) JOINT PROPOSAL.—Not later than  
22 45 days after the date of enactment of this  
23 Act, representatives of railroad manage-  
24 ment and representatives of railroad labor  
25 shall submit to the Administrator a joint



1           proposal for regulations describing the eli-  
2           gibility for and amount of special adjust-  
3           ments under this paragraph. If a joint pro-  
4           posal is submitted, the Administrator shall  
5           promulgate regulations that reflect the  
6           joint proposal.

7                   (iii) ABSENCE OF JOINT PROPOSAL.—

8           If railroad management and railroad labor  
9           are unable to agree on a joint proposal  
10          within 45 days after the date of enactment  
11          of this Act, the benefits prescribed in sub-  
12          paragraph (E) shall be the benefits avail-  
13          able to claimants, and the Administrator  
14          shall promulgate regulations containing  
15          such benefits.

16                   (iv) REVIEW.—The parties partici-

17          pating in the arbitration may file in the  
18          United States District Court for the Dis-  
19          trict of Columbia a petition for review of  
20          the Administrator's order. The court shall  
21          have jurisdiction to affirm the order of the  
22          Administrator, or to set it aside, in whole  
23          or in part, or it may remand the pro-  
24          ceedings to the Administrator for such fur-  
25          ther action as it may direct. On such re-

1 view, the findings and order of the Admin-  
2 istrator shall be conclusive on the parties,  
3 except that the order of the Administrator  
4 may be set aside, in whole or in parts or  
5 remanded to the Administrator, for failure  
6 of the Administrator to comply with the re-  
7 quirements of this section, for failure of  
8 the order to conform, or confine itself, to  
9 matters within the scope of the Adminis-  
10 trator's jurisdiction, or for fraud or cor-  
11 ruption.

12 (C) ELIGIBILITY.—An individual eligible to  
13 file a claim under the Act of April 22, 1908 (45  
14 U.S.C. 51 et seq.), commonly known as the  
15 Employers' Liability Act, shall be eligible for a  
16 special adjustment under this paragraph if such  
17 individual meets the criteria set forth in sub-  
18 paragraph (F).

19 (D) AMOUNT.—

20 (i) IN GENERAL.—The amount of the  
21 special adjustment shall be based on the  
22 type and severity of asbestos disease, and  
23 shall be 110 percent of the average amount  
24 an injured individual with a disease caused  
25 by asbestos, as described in section 121(d)

1 of this Act, would have received, during  
2 the 5-year period before the enactment of  
3 this Act, adjusted for inflation. This ad-  
4 justment shall be in addition to any other  
5 award for which the claimant is eligible  
6 under this Act. The amount of the special  
7 adjustment shall be reduced by an amount  
8 reasonably calculated to take into account  
9 all expenses of litigation normally borne by  
10 plaintiffs, including attorney's fees.

11 (ii) LIMITATION.—The amount under  
12 clause (i) may not exceed the amount the  
13 claimant is eligible to receive before apply-  
14 ing the special adjustment under that  
15 clause.

16 (E) ARBITRATED BENEFITS.—If railroad  
17 management and railroad labor are unable to  
18 agree on a joint proposal within 45 days after  
19 the date of enactment of this Act, the Adminis-  
20 trator shall appoint an arbitrator to determine  
21 the benefits under subparagraph (D). The Ad-  
22 ministrator shall appoint an arbitrator who  
23 shall be acceptable to both railroad manage-  
24 ment and railroad labor. Railroad management  
25 and railroad labor shall each designate their

1           representatives to participate in the arbitration.  
2           The arbitrator shall submit the benefits levels  
3           to the Administrator not later than 30 days  
4           after appointment and such benefits levels shall  
5           be based on information provided by rail labor  
6           and rail management. The information sub-  
7           mitted to the arbitrator by railroad manage-  
8           ment and railroad labor shall be considered con-  
9           fidential and shall be disclosed to the other  
10          party upon execution of an appropriate con-  
11          fidentiality agreement. Unless the submitting  
12          party provides written consent, neither the arbi-  
13          trator nor either party to the arbitration shall  
14          divulge to any third party any information or  
15          data, in any form, submitted to the arbitrator  
16          under this section. Nor shall either party use  
17          such information or data for any purpose other  
18          than participation in the arbitration proceeding,  
19          and each party shall return to the other any in-  
20          formation it has received from the other party  
21          as soon the arbitration is concluded. Informa-  
22          tion submitted to the arbitrator may not be ad-  
23          mitted into evidence, nor discovered, in any civil  
24          litigation in Federal or State court. The nature  
25          of the information submitted to the arbitrator

1 shall be within the sole discretion of the submit-  
2 ting party, and the arbitrator may not require  
3 a party to submit any particular information,  
4 including information subject to a prior con-  
5 fidentiality agreement.

6 (F) DEMONSTRATION OF ELIGIBILITY.—

7 (i) IN GENERAL.—A claimant under  
8 this paragraph shall be required to dem-  
9 onstrate—

10 (I) employment of the claimant  
11 in the railroad industry;

12 (II) exposure of the claimant to  
13 asbestos as part of that employment;  
14 and

15 (III) the nature and severity of  
16 the asbestos-related injury.

17 (ii) MEDICAL CRITERIA.—In order to  
18 be eligible for a special adjustment a  
19 claimant shall meet the criteria set forth in  
20 section 121 that would qualify a claimant  
21 for a payment under Level II or greater.

22 (5) MEDICAL MONITORING.—An asbestos claim-  
23 ant with asymptomatic exposure, based on the cri-  
24 teria under section 121(d)(1), shall only be eligible

1 for medical monitoring reimbursement as provided  
2 under section 132.

3 (6) COST-OF-LIVING ADJUSTMENT.—

4 (A) IN GENERAL.—Beginning January 1,  
5 2007, award amounts under paragraph (1)  
6 shall be annually increased by an amount equal  
7 to such dollar amount multiplied by the cost-of-  
8 living adjustment, rounded to the nearest  
9 \$1,000 increment.

10 (B) CALCULATION OF COST-OF-LIVING AD-  
11 JUSTMENT.—For the purposes of subparagraph  
12 (A), the cost-of-living adjustment for any cal-  
13 endar year shall be the percentage, if any, by  
14 which the consumer price index for the suc-  
15 ceeding calendar year exceeds the consumer  
16 price index for calendar year 2005.

17 (C) CONSUMER PRICE INDEX.—

18 (i) IN GENERAL.—For the purposes of  
19 subparagraph (B), the consumer price  
20 index for any calendar year is the average  
21 of the consumer price index as of the close  
22 of the 12-month period ending on August  
23 31 of such calendar year.

24 (ii) DEFINITION.—For purposes of  
25 clause (i), the term “consumer price

1 index” means the consumer price index  
2 published by the Department of Labor.  
3 The consumer price index series to be used  
4 for award escalations shall include the con-  
5 sumer price index used for all-urban con-  
6 sumers, with an area coverage of the  
7 United States city average, for all items,  
8 based on the 1982–1984 index based pe-  
9 riod, as published by the Department of  
10 Labor.

11 **SEC. 132. MEDICAL MONITORING.**

12 (a) RELATION TO STATUTE OF LIMITATIONS.—The  
13 filing of a claim under this Act that seeks reimbursement  
14 for medical monitoring shall not be considered as evidence  
15 that the claimant has discovered facts that would other-  
16 wise commence the period applicable for purposes of the  
17 statute of limitations under section 113(b).

18 (b) COSTS.—Reimbursable medical monitoring costs  
19 shall include the costs of a claimant not covered by health  
20 insurance for an examination by the claimant’s physician,  
21 x-ray tests, and pulmonary function tests every 3 years.

22 (c) REGULATIONS.—The Administrator shall promul-  
23 gate regulations that establish—

24 (1) the reasonable costs for medical monitoring  
25 that is reimbursable; and

1           (2) the procedures applicable to asbestos claim-  
2       ants.

3   **SEC. 133. PAYMENT.**

4       (a) STRUCTURED PAYMENTS.—

5           (1) IN GENERAL.—An asbestos claimant who is  
6       entitled to an award should receive the amount of  
7       the award through structured payments from the  
8       Fund, made over a period of 3 years, and in no  
9       event more than 4 years after the date of final adju-  
10      dication of the claim.

11          (2) PAYMENT PERIOD AND AMOUNT.—There  
12      shall be a presumption that any award paid under  
13      this subsection shall provide for payment of—

14           (A) 40 percent of the total amount in year  
15           1;

16           (B) 30 percent of the total amount in year  
17           2; and

18           (C) 30 percent of the total amount in year  
19           3.

20      (3) EXTENSION OF PAYMENT PERIOD.—

21           (A) IN GENERAL.—The Administrator  
22      shall develop guidelines to provide for the pay-  
23      ment period of an award under subsection (a)  
24      to be extended to a 4-year period if such action  
25      is warranted in order to preserve the overall sol-



1 vency of the Fund. Such guidelines shall include  
 2 reference to the number of claims made to the  
 3 Fund and the awards made and scheduled to be  
 4 paid from the Fund as provided under section  
 5 405.

6 (B) LIMITATIONS.—In no event shall less  
 7 than 50 percent of an award be paid in the first  
 8 2 years of the payment period under this sub-  
 9 section.

10 (4) LUMP-SUM PAYMENTS.—

11 (A) In general.—The Administrator shall  
 12 develop guidelines to provide for 1 lump-sum  
 13 payment to asbestos claimants who are meso-  
 14 thelioma victims and who are alive on the date  
 15 on which the Administrator receives notice of  
 16 the eligibility of the claimant.

17 (B) TIMING OF PAYMENTS.—Lump-sum  
 18 payments shall be made within the shorter of—

19 (i) not later than 30 days after the  
 20 date the claim is approved by the Adminis-  
 21 trator; or

22 (ii) not later than 6 months after the  
 23 date the claim is filed.

24 (C) TIMING OF PAYMENTS TO BE AD-  
 25 JUSTED WITH RESPECT TO SOLVENCY OF THE

1           FUND.—If the Administrator determines that  
 2           solvency of the Fund would be severely harmed  
 3           by the timing of the payments required under  
 4           subparagraph (B), the time for such payments  
 5           may be extended to the shorter of—

6                   (i) not later than 6 months after the  
 7                   date the claim is approved by the Adminis-  
 8                   trator; or

9                   (ii) not later than 11 months after the  
 10                  date the claim is filed.

11           (5) EXPEDITED PAYMENTS.—

12                   (A) IN GENERAL.—The Administrator  
 13                   shall develop guidelines to provide for expedited  
 14                   payments to asbestos claimants in cases of ter-  
 15                   minal health claims as described under section  
 16                   106(c)(2)(B) and (C).

17                   (B) TIMING OF PAYMENTS.—Total pay-  
 18                   ments shall be made within the shorter of—

19                           (i) not later than 6 months after the  
 20                           date the claim is approved by the Adminis-  
 21                           trator; or

22                           (ii) not later than 1 year after the  
 23                           date the claim is filed.

24                   (C) TIMING OF PAYMENTS TO BE AD-  
 25                   JUSTED WITH RESPECT TO SOLVENCY OF THE

1           FUND.—If the Administrator determines that  
 2           solvency of the Fund would be severely harmed  
 3           by the timing of the payments required under  
 4           subparagraph (B), the time for such payments  
 5           may be extended to the shorter of—

6                   (i) not later than 1 year after the date  
 7                   the claim is approved by the Adminis-  
 8                   trator; or

9                   (ii) not later than 2 years after the  
 10                  date the claim is filed.

11           (D) PRIORITIZATION OF CLAIMS.—The Ad-  
 12           ministrator shall, in final regulations promul-  
 13           gated under section 101(c), designate categories  
 14           of claims to be handled on an expedited basis.  
 15           The Administrator shall prioritize the proc-  
 16           essing and payment of health claims involving  
 17           claimants with the most serious health risks.  
 18           The Administrator shall also prioritize claims  
 19           from claimants who face extreme financial  
 20           hardship.

21           (6) ANNUITY.—An asbestos claimant may elect  
 22           to receive any payments to which that claimant is  
 23           entitled under this title in the form of an annuity.

1       (b) LIMITATION ON TRANSFERABILITY.—A claim  
2 filed under this Act shall not be assignable or otherwise  
3 transferable under this Act.

4       (c) CREDITORS.—An award under this title shall be  
5 exempt from all claims of creditors and from levy, execu-  
6 tion, and attachment or other remedy for recovery or col-  
7 lection of a debt, and such exemption may not be waived.

8       (d) MEDICARE AS SECONDARY PAYER.—No award  
9 under this title shall be deemed a payment for purposes  
10 of section 1862 of the Social Security Act (42 U.S.C.  
11 1395y).

12       (e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S  
13 BANKRUPTCY CASE.—If an asbestos claimant files a peti-  
14 tion for relief under section 301 of title 11, United States  
15 Code, no award granted under this Act shall be treated  
16 as property of the bankruptcy estate of the asbestos claim-  
17 ant in accordance with section 541(b)(6) of title 11,  
18 United States Code.

19       (f) EFFECT OF PAYMENT.—The full payment of an  
20 asbestos claim under this section shall be in full satisfac-  
21 tion of such claim and shall be deemed to operate as a  
22 release to such claim. No claimant with an asbestos claim  
23 that has been fully paid under this section may proceed  
24 in the tort system with respect to such claim.

1 **SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSA-**  
2 **TION AND PRIOR AWARDS.**

3 (a) IN GENERAL.—The amount of an award other-  
4 wise available to an asbestos claimant under this title shall  
5 be reduced by the amount of any collateral source com-  
6 pensation and by any amounts paid or to be paid to the  
7 claimant for a prior award under this Act.

8 (b) EXCLUSIONS.—

9 (1) COLLATERAL SOURCE COMPENSATION.—In  
10 no case shall statutory benefits under workers' com-  
11 pensation laws, special adjustments made under sec-  
12 tion 131(b)(3), occupational or total disability bene-  
13 fits under the Railroad Retirement Act (45 U.S.C.  
14 201 et seq.), sickness benefits under the Railroad  
15 Unemployment Insurance Act (45 U.S.C. 351 et  
16 seq.), and veterans' benefits programs be deemed as  
17 collateral source compensation for purposes of this  
18 section.

19 (2) PRIOR AWARD PAYMENTS.—Any amounts  
20 paid or to be paid for a prior claim for a nonmalignant  
21 disease (Levels I through V) filed against the  
22 Fund shall not be deducted as a setoff against  
23 amounts payable for the second injury claims for a  
24 malignant disease (Levels VI through IX), unless  
25 the malignancy was diagnosed before the date on  
26 which the nonmalignancy claim was compensated.

1 **SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT**  
2 **OF AWARDS.**

3 (a) IN GENERAL.—The payment of an award under  
4 section 106 or 133 shall not be considered a form of com-  
5 pensation or reimbursement for a loss for purposes of im-  
6 posing liability on any asbestos claimant receiving such  
7 payment to repay any—

8 (1) insurance carrier for insurance payments;  
9 or

10 (2) person or governmental entity on account of  
11 worker's compensation, health care, or disability  
12 payments.

13 (b) NO EFFECT ON CLAIMS.—

14 (1) IN GENERAL.—The payment of an award to  
15 an asbestos claimant under section 106 or 133 shall  
16 not affect any claim of an asbestos claimant  
17 against—

18 (A) an insurance carrier with respect to in-  
19 surance; or

20 (B) against any person or governmental  
21 entity with respect to worker's compensation,  
22 healthcare, or disability.

23 (2) RULE OF CONSTRUCTION.—Nothing in this  
24 subsection shall be construed to authorize the pur-  
25 suit of a claim that is preempted under section 403.

1       **TITLE II—ASBESTOS INJURY**  
 2       **CLAIMS RESOLUTION FUND**  
 3       **Subtitle A—Asbestos Defendants**  
 4       **Funding Allocation**

5       **SEC. 201. DEFINITIONS.**

6       In this subtitle, the following definitions shall apply:

7               (1) **AFFILIATED GROUP.**—The term “affiliated  
 8       group”—

9                       (A) means a defendant participant that is  
 10                      an ultimate parent and any person whose entire  
 11                      beneficial interest is directly or indirectly owned  
 12                      by that ultimate parent on the date of enact-  
 13                      ment of this Act; and

14                     (B) shall not include any person that is a  
 15                     debtor or any direct or indirect majority-owned  
 16                     subsidiary of a debtor.

17               (2)   **INDEMNIFIABLE COST.**—The term  
 18       “indemnifiable cost” means a cost, expense, debt,  
 19       judgment, or settlement incurred with respect to an  
 20       asbestos claim that, at any time before December  
 21       31, 2002, was or could have been subject to indem-  
 22       nification, contribution, surety, or guaranty.

23               (3)   **INDEMNITEE.**—The term “indemnitee”  
 24       means a person against whom any asbestos claim  
 25       has been asserted before December 31, 2002, who

1 has received from any other person, or on whose be-  
2 half a sum has been paid by such other person to  
3 any third person, in settlement, judgment, defense,  
4 or indemnity in connection with an alleged duty with  
5 respect to the defense or indemnification of such  
6 person concerning that asbestos claim, other than  
7 under a policy of insurance or reinsurance.

8 (4) INDEMNITOR.—The term “indemnitor”  
9 means a person who has paid under a written agree-  
10 ment at any time before December 31, 2002, a sum  
11 in settlement, judgment, defense, or indemnity to or  
12 on behalf of any person defending against an asbes-  
13 tos claim, in connection with an alleged duty with  
14 respect to the defense or indemnification of such  
15 person concerning that asbestos claim, except that  
16 payments by an insurer or reinsurer under a con-  
17 tract of insurance or reinsurance shall not make the  
18 insurer or reinsurer an indemnitor for purposes of  
19 this subtitle.

20 (5) PRIOR ASBESTOS EXPENDITURES.—The  
21 term “prior asbestos expenditures”—

22 (A) means the gross total amount paid by  
23 or on behalf of a person at any time before De-  
24 cember 31, 2002, in settlement, judgment, de-



1           fense, or indemnity costs related to all asbestos  
2           claims against that person;

3           (B) includes payments made by insurance  
4           carriers to or for the benefit of such person or  
5           on such person's behalf with respect to such as-  
6           bestos claims, except as provided in section  
7           204(g);

8           (C) shall not include any payment made by  
9           a person in connection with or as a result of  
10          changes in insurance reserves required by con-  
11          tract or any activity or dispute related to insur-  
12          ance coverage matters for asbestos-related li-  
13          abilities; and

14          (D) shall not include any payment made by  
15          or on behalf of persons who are or were com-  
16          mon carriers by railroad for asbestos claims  
17          brought under the Act of April 22, 1908 (45  
18          U.S.C. 51 et seq.), commonly known as the  
19          Employers' Liability Act, as a result of oper-  
20          ations as a common carrier by railroad, includ-  
21          ing settlement, judgment, defense, or indemnity  
22          costs associated with these claims.

23          (6) ULTIMATE PARENT.—The term “ultimate  
24          parent” means a person—

1 (A) that owned, as of December 31, 2002,  
2 the entire beneficial interest, directly or indi-  
3 rectly, of at least 1 other person; and

4 (B) whose entire beneficial interest was not  
5 owned, on December 31, 2002, directly or indi-  
6 rectly, by any other single person (other than a  
7 natural person).

8 (7) ASBESTOS PREMISES CLAIM.—The term  
9 “asbestos premises claim”—

10 (A) means an asbestos claim against a cur-  
11 rent or former premises owner or landowner, or  
12 person controlling or possessing premises or  
13 land, alleging injury or death caused by expo-  
14 sure to asbestos on such premises or land or by  
15 exposure to asbestos carried off such premises  
16 or land on the clothing or belongings of another  
17 person; and

18 (B) includes any such asbestos claim  
19 against a current or former employer alleging  
20 injury or death caused by exposure to asbestos  
21 on premises or land owned, controlled or pos-  
22 sessed by the employer, if such claim is not a  
23 claim for benefits under a workers’ compensa-  
24 tion law or veterans’ benefits program.

1           (8) ASBESTOS PREMISES DEFENDANT PARTICI-  
 2           PANT.—The term “asbestos premises defendant par-  
 3           ticipant” means any defendant participant for which  
 4           95 percent or more of its prior asbestos expenditures  
 5           relate to asbestos premises claims against that de-  
 6           fendant participant.

7   **SEC. 202. AUTHORITY AND TIERS.**

8           (a) LIABILITY FOR PAYMENTS TO THE FUND.—

9           (1) IN GENERAL.—Defendant participants shall  
 10          be liable for payments to the Fund in accordance  
 11          with this section based on tiers and subtiers as-  
 12          signed to defendant participants.

13          (2) AGGREGATE PAYMENT OBLIGATIONS  
 14          LEVEL.—The total payments required of all defend-  
 15          ant participants over the life of the Fund shall not  
 16          exceed a sum equal to \$90,000,000,000 less any  
 17          bankruptcy trust credits under section 222(d). The  
 18          Administrator shall have the authority to allocate  
 19          the payments required of the defendant participants  
 20          among the tiers as provided in this title.

21          (3) ABILITY TO ENTER REORGANIZATION.—  
 22          Notwithstanding any other provision of this Act, all  
 23          debtors that, together with all of their direct or indi-  
 24          rect majority-owned subsidiaries, have prior asbestos  
 25          expenditures less than \$1,000,000 may proceed with

1 the filing, solicitation, and confirmation of a plan of  
 2 reorganization that does not comply with the re-  
 3 quirements of this Act, including a trust and chan-  
 4 neling injunction under section 524(g) of title 11,  
 5 United States Code. Any asbestos claim made in  
 6 conjunction with a plan of reorganization allowable  
 7 under the preceding sentence shall be subject to sec-  
 8 tion 403(d) of this Act.

9 (b) TIER I.—Tier I shall include all debtors that, to-  
 10 gether with all of their direct or indirect majority-owned  
 11 subsidiaries, have prior asbestos expenditures greater than  
 12 \$1,000,000.

13 (c) TREATMENT OF TIER I BUSINESS ENTITIES IN  
 14 BANKRUPTCY.—

15 (1) DEFINITION.—

16 (A) IN GENERAL.—In this subsection, the  
 17 term “bankrupt business entity” means a per-  
 18 son that is not a natural person that—

19 (i) filed a petition for relief under  
 20 chapter 11, of title 11, United States  
 21 Code, before January 1, 2003;

22 (ii) has not substantially con-  
 23 sumed, as such term is defined under  
 24 section 1101(2) of title 11, United States

1 Code, a plan of reorganization as of the  
2 date of enactment of this Act; and

3 (iii) the bankruptcy court presiding  
4 over the business entity's case determines,  
5 after notice and a hearing upon motion  
6 filed by the entity within 30 days after the  
7 date of enactment of this Act, that asbes-  
8 tos liability was not the sole or precipi-  
9 tating cause of the entity's chapter 11 fil-  
10 ing.

11 (B) MOTION AND RELATED MATTERS.—A  
12 motion under subparagraph (A)(iii) shall be  
13 supported by—

14 (i) an affidavit or declaration of the  
15 chief executive officer, chief financial offi-  
16 cer, or chief legal officer of the business  
17 entity; and

18 (ii) copies of the entity's public state-  
19 ments and securities filings made in con-  
20 nection with the entity's filing for chapter  
21 11 protection.

22 Notice of such motion shall be as directed by  
23 the bankruptcy court, and the hearing shall be  
24 limited to consideration of the question of  
25 whether or not asbestos liability was the sole or

1 precipitating cause of the entity's chapter 11  
 2 filing. The bankruptcy court shall hold a hear-  
 3 ing and make its determination with respect to  
 4 the motion within 30 days after the date the  
 5 motion is filed. In making its determination,  
 6 the bankruptcy court shall take into account  
 7 the affidavits, public statements, and securities  
 8 filings, and other information, if any, submitted  
 9 by the entity and all other facts and cir-  
 10 cumstances presented by an objecting party.  
 11 Any review of this determination shall be an ex-  
 12 pedited appeal and limited to whether the deci-  
 13 sion was against the weight of the evidence.  
 14 Any appeal of a determination shall be an expe-  
 15 dited review to the United States Circuit Court  
 16 of Appeals for the circuit in which the bank-  
 17 ruptcy is filed.

18 (2) PROCEEDING WITH REORGANIZATION  
 19 PLAN.—A bankrupt business entity may proceed  
 20 with the filing, solicitation, confirmation, and con-  
 21 summation of a plan of reorganization that does not  
 22 comply with the requirements of this Act, including  
 23 a trust and channeling injunction described in sec-  
 24 tion 524(g) of title 11, United States Code, notwith-  
 25 standing any other provisions of this Act, if the

1 bankruptcy court makes a favorable determination  
2 under paragraph (1)(B), unless the bankruptcy  
3 court's determination is overruled on appeal and all  
4 appeals are final. Such a bankrupt business entity  
5 may continue to so proceed, if—

6 (A) on request of a party in interest or on  
7 a motion of the court, and after a notice and  
8 a hearing, the bankruptcy court presiding over  
9 the chapter 11 case of the bankrupt business  
10 entity determines that such confirmation is re-  
11 quired to avoid the liquidation or the need for  
12 further financial reorganization of that entity;  
13 and

14 (B) an order confirming the plan of reor-  
15 ganization is entered by the bankruptcy court  
16 within 9 months after the date of enactment of  
17 this Act or such longer period of time approved  
18 by the bankruptcy court for cause shown.

19 (3) APPLICABILITY.—If the bankruptcy court  
20 does not make the determination required under  
21 paragraph (2), or if an order confirming the plan is  
22 not entered within 9 months after the date of enact-  
23 ment of this Act or such longer period of time ap-  
24 proved by the bankruptcy court for cause shown, the  
25 provisions of this Act shall apply to the bankrupt

1 business entity notwithstanding the certification.  
2 Any timely appeal under title 11, United States  
3 Code, from a confirmation order entered during the  
4 applicable time period shall automatically extend the  
5 time during which this Act is inapplicable to the  
6 bankrupt business entity, until the appeal is fully  
7 and finally resolved.

8 (4) OFFSETS.—

9 (A) PAYMENTS BY INSURERS.—To the ex-  
10 tent that a bankrupt business entity or debtor  
11 successfully confirms a plan of reorganization,  
12 including a trust, and channeling injunction  
13 that involves payments by insurers who are oth-  
14 erwise subject to this Act as described under  
15 section 524(g) of title 11, United States Code,  
16 an insurer who makes payments to the trust  
17 shall obtain a dollar-for-dollar reduction in the  
18 amount otherwise payable by that insurer under  
19 this Act to the Fund.

20 (B) CONTRIBUTIONS TO FUND.—Any cash  
21 payments by a bankrupt business entity, if any,  
22 to a trust described under section 524(g) of  
23 title 11, United States Code, may be counted as  
24 a contribution to the Fund.



1 (d) TIERS II THROUGH VI.—Except as provided in  
 2 section 204 and subsection (b) of this section, persons or  
 3 affiliated groups are included in Tier II, III, IV, V, or  
 4 VI, according to the prior asbestos expenditures paid by  
 5 such persons or affiliated groups as follows:

6 (1) Tier II: \$75,000,000 or greater.

7 (2) Tier III: \$50,000,000 or greater, but less  
 8 than \$75,000,000.

9 (3) Tier IV: \$10,000,000 or greater, but less  
 10 than \$50,000,000.

11 (4) Tier V: \$5,000,000 or greater, but less than  
 12 \$10,000,000.

13 (5) Tier VI: \$1,000,000 or greater, but less  
 14 than \$5,000,000.

15 (6) ASBESTOS PREMISES DEFENDANT PARTICI-  
 16 PANTS.—

17 (A) IN GENERAL.—Asbestos premises de-  
 18 fendant participants that would be included in  
 19 Tier II, III, IV or V according to their prior as-  
 20 bestos expenditures shall, after 5 years of the  
 21 Fund being operational, instead be assigned to  
 22 the immediately lower tier, such that—

23 (i) an asbestos premises defendant  
 24 participant that would be assigned to Tier  
 25 II shall instead be assigned to Tier III;

1 (ii) an asbestos premises defendant  
 2 participant that would be assigned to Tier  
 3 III shall instead be assigned to Tier IV;

4 (iii) an asbestos premises defendant  
 5 participant that would be assigned to Tier  
 6 IV shall instead be assigned to Tier V; and

7 (iv) an asbestos premises defendant  
 8 participant that would be assigned to Tier  
 9 V shall instead be assigned to Tier VI.

10 (B) RETURN TO ORIGINAL TIER.—The Ad-  
 11 ministrator may return asbestos premises de-  
 12 fendant participants to their original tier, on a  
 13 yearly basis, if the Administrator determines  
 14 that the additional revenues that would be col-  
 15 lected are needed to preserve the solvency of the  
 16 Fund.

17 (e) TIER PLACEMENT AND COSTS.—

18 (1) PERMANENT TIER PLACEMENT.—After a  
 19 defendant participant or affiliated group is assigned  
 20 to a tier and subtier under section 204(i)(6), the  
 21 participant or affiliated group shall remain in that  
 22 tier and subtier throughout the life of the Fund, re-  
 23 gardless of subsequent events, including—

24 (A) the filing of a petition under a chapter  
 25 of title 11, United States Code;

1 (B) a discharge of debt in bankruptcy;

2 (C) the confirmation of a plan of reorga-  
3 nization; or

4 (D) the sale or transfer of assets to any  
5 other person or affiliated group, unless the Ad-  
6 ministrator finds that the information sub-  
7 mitted by the participant or affiliated group to  
8 support its inclusion in that tier was inaccurate.

9 (2) COSTS.—Payments to the Fund by all per-  
10 sons that are the subject of a case under a chapter  
11 of title 11, United States Code, after the date of en-  
12 actment of this Act—

13 (A) shall constitute costs and expenses of  
14 administration of the case under section 503 of  
15 title 11, United States Code, and shall be pay-  
16 able in accordance with the payment provisions  
17 under this subtitle notwithstanding the pend-  
18 ency of the case under that title 11;

19 (B) shall not be stayed or affected as to  
20 enforcement or collection by any stay or injunc-  
21 tion power of any court; and

22 (C) shall not be impaired or discharged in  
23 any current or future case under title 11,  
24 United States Code.

25 (f) SUPERSEDING PROVISIONS.—

1           (1) IN GENERAL.—All of the following shall be  
2       superseded in their entireties by this Act:

3           (A) The treatment of any asbestos claim in  
4       any plan of reorganization with respect to any  
5       debtor included in Tier I.

6           (B) Any asbestos claim against any debtor  
7       included in Tier I.

8           (C) Any agreement, understanding, or un-  
9       dertaking by any such debtor or any third party  
10      with respect to the treatment of any asbestos  
11      claim filed in a debtor's bankruptcy case or  
12      with respect to a debtor before the date of en-  
13      actment of this Act, whenever such debtor's  
14      case is either still pending, if such case is pend-  
15      ing under a chapter other than chapter 11 of  
16      title 11, United States Code, or subject to con-  
17      firmation or substantial consummation of a  
18      plan of reorganization under chapter 11 of title  
19      11, United States Code.

20          (2) PRIOR AGREEMENTS OF NO EFFECT.—Not-  
21      withstanding section 403(c)(3), any plan of reorga-  
22      nization, agreement, understanding, or undertaking  
23      by any debtor (including any pre-petition agreement,  
24      understanding, or undertaking that requires future  
25      performance) or any third party under paragraph

1 (1), and any agreement, understanding, or under-  
2 taking entered into in anticipation, contemplation, or  
3 furtherance of a plan of reorganization, to the extent  
4 it relates to any asbestos claim, shall be of no force  
5 or effect, and no person shall have any right or  
6 claim with respect to any such agreement, under-  
7 standing, or undertaking.

8 **SEC. 203. SUBTIERS.**

9 (a) IN GENERAL.—

10 (1) SUBTIER LIABILITY.—Except as otherwise  
11 provided under subsections (b), (d), and (l) of sec-  
12 tion 204, persons or affiliated groups shall be in-  
13 cluded within Tiers I through VII and shall pay  
14 amounts to the Fund in accordance with this sec-  
15 tion.

16 (2) REVENUES.—

17 (A) IN GENERAL.—For purposes of this  
18 section, revenues shall be determined in accord-  
19 ance with generally accepted accounting prin-  
20 ciples, consistently applied, using the amount  
21 reported as revenues in the annual report filed  
22 with the Securities and Exchange Commission  
23 in accordance with the Securities Exchange Act  
24 of 1934 (15 U.S.C. 78a et seq.) for the most  
25 recent fiscal year ending on or before December

1 31, 2002. If the defendant participant or affili-  
2 ated group does not file reports with the Securi-  
3 ties and Exchange Commission, revenues shall  
4 be the amount that the defendant participant or  
5 affiliated group would have reported as reve-  
6 nues under the rules of the Securities and Ex-  
7 change Commission in the event that it had  
8 been required to file.

9 (B) INSURANCE PREMIUMS.—Any portion  
10 of revenues of a defendant participant that is  
11 derived from insurance premiums shall not be  
12 used to calculate the payment obligation of that  
13 defendant participant under this subtitle.

14 (C) DEBTORS.—Each debtor's revenues  
15 shall include the revenues of the debtor and all  
16 of the direct or indirect majority-owned subsidi-  
17 aries of that debtor, except that the pro forma  
18 revenues of a person that is included in Subtier  
19 2 of Tier I shall not be included in calculating  
20 the revenues of any debtor that is a direct or  
21 indirect majority owner of such Subtier 2 per-  
22 son. If a debtor or affiliated group includes a  
23 person in respect of whose liabilities for asbes-  
24 tos claims a class action trust has been estab-

lished, there shall be excluded from the 2002  
revenues of such debtor or affiliated group—

(i) all revenues of the person in re-  
spect of whose liabilities for asbestos  
claims the class action trust was estab-  
lished; and

(ii) all revenues of the debtor and af-  
filiated group attributable to the historical  
business operations or assets of such per-  
son, regardless of whether such business  
operations or assets were owned or con-  
ducted during the year 2002 by such per-  
son or by any other person included within  
such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall  
be included in subtiers and shall pay amounts to the  
Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are  
debtors with prior asbestos expenditures of  
\$1,000,000 or greater, shall be included in  
Subtier 1.

1           (B) PAYMENT.—Each debtor included in  
2           Subtier 1 shall pay on an annual basis 1.67024  
3           percent of the debtor’s 2002 revenues.

4           (C) OTHER ASSETS.—The Administrator,  
5           at the sole discretion of the Administrator, may  
6           allow a Subtier 1 debtor to satisfy its funding  
7           obligation under this paragraph with assets  
8           other than cash if the Administrator determines  
9           that requiring an all-cash payment of the debt-  
10          or’s funding obligation would render the debt-  
11          or’s reorganization infeasible.

12          (D) LIABILITY.—

13               (i) IN GENERAL.—If a person who is  
14               subject to a case pending under a chapter  
15               of title 11, United States Code, as defined  
16               in section 201(3)(A)(i), does not pay when  
17               due any payment obligation for the debtor,  
18               the Administrator shall have the right to  
19               seek payment of all or any portion of the  
20               entire amount due (as well as any other  
21               amount for which the debtor may be liable  
22               under sections 223 and 224) from any of  
23               the direct or indirect majority-owned sub-  
24               sidiaries under section 201(3)(A)(ii).



1           (ii) CAUSE OF ACTION.—Notwith-  
2           standing section 221(e), this Act shall not  
3           preclude actions among persons within a  
4           debtor under section 201(3)(A) (i) and (ii)  
5           with respect to the payment obligations  
6           under this Act.

7           (iii) RIGHT OF CONTRIBUTION.—

8           (I) IN GENERAL.—Notwith-  
9           standing any other provision of this  
10          Act, if a direct or indirect majority-  
11          owned foreign subsidiary of a debtor  
12          participant (with such relationship to  
13          the debtor participant as determined  
14          on the date of enactment of this Act)  
15          is or becomes subject to any foreign  
16          insolvency proceedings, and such for-  
17          eign direct or indirect-majority owned  
18          subsidiary is liquidated in connection  
19          with such foreign insolvency pro-  
20          ceedings (or if the debtor participant's  
21          interest in such foreign subsidiary is  
22          otherwise canceled or terminated in  
23          connection with such foreign insol-  
24          vency proceedings), the debtor partici-  
25          pant shall have a claim against such

foreign subsidiary or the estate of  
such foreign subsidiary in an amount  
equal to the greater of—

(aa) the estimated amount  
of all current and future asbestos  
liabilities against such foreign  
subsidiary; or

(bb) the foreign subsidiary's  
allocable share of the debtor par-  
ticipant's funding obligations to  
the Fund as determined by such  
foreign subsidiary's allocable  
share of the debtor participant's  
2002 gross revenue.

(II) DETERMINATION OF CLAIM  
AMOUNT.—The claim amount under  
subclause (I) (aa) or (bb) shall be de-  
termined by a court of competent ju-  
risdiction in the United States.

(III) EFFECT ON PAYMENT OBLI-  
GATION.—The right to, or recovery  
under, any such claim shall not re-  
duce, limit, delay, or otherwise affect  
the debtor participant's payment obli-  
gations under this Act.

1 (3) SUBTIER 2.—

2 (A) IN GENERAL.—Notwithstanding para-  
3 graph (2), all persons that are debtors that  
4 have no material continuing business oper-  
5 ations, other than class action trusts under  
6 paragraph (6), but hold cash or other assets  
7 that have been allocated or earmarked for the  
8 settlement of asbestos claims shall be included  
9 in Subtier 2.

10 (B) ASSIGNMENT OF ASSETS.—Not later  
11 than 90 days after the date of enactment of  
12 this Act, each person included in Subtier 2 shall  
13 assign all of its unencumbered assets to the  
14 Fund.

15 (4) SUBTIER 3.—

16 (A) IN GENERAL.—Notwithstanding para-  
17 graph (2), all persons that are debtors other  
18 than those included in Subtier 2, which have no  
19 material continuing business operations and no  
20 cash or other assets allocated or earmarked for  
21 the settlement of any asbestos claim, shall be  
22 included in Subtier 3.

23 (B) ASSIGNMENT OF UNENCUMBERED AS-  
24 SETS.—Not later than 90 days after the date of  
25 enactment of this Act, each person included in

1 Subtier 3 shall contribute an amount equal to  
 2 50 percent of its total unencumbered assets.

3 (5) CALCULATION OF UNENCUMBERED AS-  
 4 SETS.—Unencumbered assets shall be calculated as  
 5 the Subtier 2 or 3 person’s total assets, excluding  
 6 insurance-related assets, jointly held, in trust or oth-  
 7 erwise, with a defendant participant, less—

8 (A) all allowable administrative expenses;

9 (B) allowable priority claims under section  
 10 507 of title 11, United States Code; and

11 (C) allowable secured claims.

12 (6) CLASS ACTION TRUST.—The assets of any  
 13 class action trust that has been established in re-  
 14 spect of the liabilities for asbestos claims of any per-  
 15 son included within a debtor and affiliated group  
 16 that has been included in Tier I (exclusive of any as-  
 17 sets needed to pay previously incurred expenses and  
 18 asbestos claims within the meaning of section  
 19 403(d)(1), before the date of enactment of this Act)  
 20 shall be transferred to the Fund not later than 60  
 21 days after the date of enactment of this Act.

22 (c) TIER II SUBTIERS.—

23 (1) IN GENERAL.—Each person or affiliated  
 24 group in Tier II shall be included in 1 of the 5  
 25 subtiers of Tier II, based on the person’s or affili-

1       ated group's revenues. Such subtiers shall each con-  
 2       tain as close to an equal number of total persons  
 3       and affiliated groups as possible, with—

4               (A) those persons or affiliated groups with  
 5               the highest revenues included in Subtier 1;

6               (B) those persons or affiliated groups with  
 7               the next highest revenues included in Subtier 2;

8               (C) those persons or affiliated groups with  
 9               the lowest revenues included in Subtier 5;

10              (D) those persons or affiliated groups with  
 11              the next lowest revenues included in Subtier 4;  
 12              and

13              (E) those persons or affiliated groups re-  
 14              maining included in Subtier 3.

15              (2) PAYMENTS.—Each person or affiliated  
 16              group within each subtier shall pay, on an annual  
 17              basis, the following:

18                      (A) Subtier 1: \$27,500,000.

19                      (B) Subtier 2: \$24,750,000.

20                      (C) Subtier 3: \$22,000,000.

21                      (D) Subtier 4: \$19,250,000.

22                      (E) Subtier 5: \$16,500,000.

23              (d) TIER III SUBTIERS.—

24                      (1) IN GENERAL.—Each person or affiliated  
 25              group in Tier III shall be included in 1 of the 5

subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: \$16,500,000.

(B) Subtier 2: \$13,750,000.

(C) Subtier 3: \$11,000,000.

(D) Subtier 4: \$8,250,000.

(E) Subtier 5: \$5,500,000.

(e) TIER IV SUBTIERS.—

1           (1) IN GENERAL.—Each person or affiliated  
 2           group in Tier IV shall be included in 1 of the 4  
 3           subtiers of Tier IV, based on the person’s or affili-  
 4           ated group’s revenues. Such subtiers shall each con-  
 5           tain as close to an equal number of total persons  
 6           and affiliated groups as possible, with those persons  
 7           or affiliated groups with the highest revenues in  
 8           Subtier 1, those with the lowest revenues in Subtier  
 9           4. Those persons or affiliated groups with the high-  
 10          est revenues among those remaining will be included  
 11          in Subtier 2 and the rest in Subtier 3.

12           (2) PAYMENT.—Each person or affiliated group  
 13          within each subtier shall pay, on an annual basis,  
 14          the following:

15                   (A) Subtier 1: \$3,850,000.

16                   (B) Subtier 2: \$2,475,000.

17                   (C) Subtier 3: \$1,650,000.

18                   (D) Subtier 4: \$550,000.

19          (f) TIER V SUBTIERS.—

20           (1) IN GENERAL.—Each person or affiliated  
 21           group in Tier V shall be included in 1 of the 3  
 22           subtiers of Tier V, based on the person’s or affili-  
 23           ated group’s revenues. Such subtiers shall each con-  
 24           tain as close to an equal number of total persons  
 25           and affiliated groups as possible, with those persons

1 or affiliated groups with the highest revenues in  
 2 Subtier 1, those with the lowest revenues in Subtier  
 3 3, and those remaining in Subtier 2.

4 (2) PAYMENT.—Each person or affiliated group  
 5 within each subtier shall pay, on an annual basis,  
 6 the following:

7 (A) Subtier 1: \$1,000,000.

8 (B) Subtier 2: \$500,000.

9 (C) Subtier 3: \$200,000.

10 (g) TIER VI SUBTIERS.—

11 (1) IN GENERAL.—Each person or affiliated  
 12 group in Tier VI shall be included in 1 of the 3  
 13 subtiers of Tier VI, based on the person's or affi-  
 14 lated group's revenues. Such subtiers shall each con-  
 15 tain as close to an equal number of total persons  
 16 and affiliated groups as possible, with those persons  
 17 or affiliated groups with the highest revenues in  
 18 Subtier 1, those with the lowest revenues in Subtier  
 19 3, and those remaining in Subtier 2.

20 (2) PAYMENT.—Each person or affiliated group  
 21 within each subtier shall pay, on an annual basis,  
 22 the following:

23 (A) Subtier 1: \$500,000.

24 (B) Subtier 2: \$250,000.

25 (C) Subtier 3: \$100,000.



1           (3) OTHER PAYMENT FOR CERTAIN PERSONS  
2       AND AFFILIATED GROUPS.—

3           (A) IN GENERAL.—Notwithstanding any  
4       other provision of this subsection, and if an ad-  
5       justment authorized by this subsection does not  
6       impair the overall solvency of the Fund, any  
7       person or affiliated group within Tier VI whose  
8       required subtier payment in any given year  
9       would exceed such person's or group's average  
10      annual expenditure on settlements, and judg-  
11      ments of asbestos disease-related claims over  
12      the 8 years before the date of enactment of this  
13      Act shall make the payment required of the im-  
14      mediately lower subtier or, if the person's or  
15      group's average annual expenditures on settle-  
16      ments and judgments over the 8 years before  
17      the date of enactment of this Act is less than  
18      \$100,000, shall not be required to make a pay-  
19      ment under this Act.

20          (B) NO FURTHER ADJUSTMENT.—Any  
21      person or affiliated group that receives an ad-  
22      justment under this paragraph shall not be eli-  
23      gible to receive any further adjustment under  
24      section 204(d).

25      (h) TIER VII.—

1           (1) IN GENERAL.—Notwithstanding prior as-  
2       bestos expenditures that might qualify a person or  
3       affiliated group to be included in Tiers II, III, IV,  
4       V, or VI, a person or affiliated group shall also be  
5       included in Tier VII, if the person or affiliated  
6       group—

7           (A) is or has at any time been subject to  
8       asbestos claims brought under the Act of April  
9       22, 1908 (45 U.S.C. 51 et seq.), commonly  
10      known as the Employers' Liability Act, as a re-  
11      sult of operations as a common carrier by rail-  
12      road; and

13          (B) has paid (including any payments  
14      made by others on behalf of such person or af-  
15      filiated group) not less than \$5,000,000 in set-  
16      tlement, judgment, defense, or indemnity costs  
17      relating to such claims, and such settlement,  
18      judgment, defense, or indemnity costs con-  
19      stitute 75 percent or more of the total prior as-  
20      bestos expenditures by the person or affiliated  
21      group.

22          (2) ADDITIONAL AMOUNT.—The payment re-  
23      quirement for persons or affiliated groups included  
24      in Tier VII shall be in addition to any payment re-

1        requirement applicable to such person or affiliated  
2        group under Tiers II through VI.

3            (3) SUBTIER 1.—Each person or affiliated  
4        group in Tier VII with revenues of \$6,000,000,000  
5        or more is included in Subtier 1 and shall make an-  
6        nual payments of \$11,000,000 to the Fund.

7            (4) SUBTIER 2.—Each person or affiliated  
8        group in Tier VII with revenues of less than  
9        \$6,000,000,000, but not less than \$4,000,000,000 is  
10       included in Subtier 2 and shall make annual pay-  
11       ments of \$5,500,000 to the Fund.

12           (5) SUBTIER 3.—Each person or affiliated  
13        group in Tier VII with revenues of less than  
14        \$4,000,000,000, but not less than \$500,000,000 is  
15        included in Subtier 3 and shall make annual pay-  
16        ments of \$550,000 to the Fund.

17           (6) JOINT VENTURE REVENUES AND LIABIL-  
18        ITY.—

19            (A) REVENUES.—For purposes of this sub-  
20        section, the revenues of a joint venture shall be  
21        included on a pro rata basis reflecting relative  
22        joint ownership to calculate the revenues of the  
23        parents of that joint venture. The joint venture  
24        shall not be responsible for a contribution  
25        amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers’ Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

**SEC. 204. ASSESSMENT ADMINISTRATION.**

(a) IN GENERAL.—

(1) PAYMENT.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(A) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(B) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (d) and (m), equals the max-

imum aggregate payment obligation of section 202(a)(2).

(2) LIMITATION.—

(A) DEFINITION.—In this paragraph, the term “affiliated group” shall include any defendant participant that is an ultimate parent.

(B) IN GENERAL.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (l) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of \$16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or before December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater.

(C) EXCEPTION.—The limitation in this paragraph shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or before December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds \$1,000,000,000.

1           (D) DETERMINATIONS.—The revenues of  
2           the affiliated group shall be determined in ac-  
3           cordance with section 203(a)(2), except for the  
4           applicable date. An affiliated group that claims  
5           a reduction in its payment in any year shall file  
6           with the Administrator, in accordance with pro-  
7           cedures prescribed by the Administrator, suffi-  
8           cient information to allow the Administrator to  
9           determine the amount of any such reduction in  
10          that year. If as a result of the application of the  
11          limitation provided in this paragraph an affili-  
12          ated group is exempt from paying all or part of  
13          a guaranteed payment surcharge or bankruptcy  
14          trust surcharge, then the reduction in the affili-  
15          ated group's payment obligation due to the limi-  
16          tation in this subsection shall be redistributed  
17          in accordance with subsection (l).

18           (E) RULE OF CONSTRUCTION.—Nothing in  
19           this paragraph shall be construed as reducing  
20           the minimum aggregate annual payment obliga-  
21           tion of defendant participants as provided  
22           under subsection (h).

23          (b) SMALL BUSINESS EXEMPTION.—Notwith-  
24          standing any other provision of this subtitle, a person or  
25          affiliated group that is a small business concern (as de-

1 fined under section 3 of the Small Business Act (15  
2 U.S.C. 632)), on December 31, 2002, is exempt from any  
3 payment requirement under this subtitle and shall not be  
4 included in the subtier allocations under section 203.

5 (c) PROCEDURES.—The Administrator shall pre-  
6 scribe procedures on how amounts payable under this sub-  
7 title are to be paid, including, to the extent the Adminis-  
8 trator determines appropriate, procedures relating to pay-  
9 ment in installments.

10 (d) ADJUSTMENTS.—

11 (1) IN GENERAL.—Under expedited procedures  
12 established by the Administrator, a defendant partic-  
13 ipant may seek adjustment of the amount of its pay-  
14 ment obligation based on severe financial hardship  
15 or demonstrated inequity. The Administrator may  
16 determine whether to grant an adjustment and the  
17 size of any such adjustment, in accordance with this  
18 subsection. A defendant participant has a right to  
19 obtain a rehearing of the Administrator’s determina-  
20 tion under this subsection under the procedures pre-  
21 scribed in subsection (i)(10). The Administrator may  
22 adjust a defendant participant’s payment obligations  
23 under this subsection, either by forgiving the rel-  
24 evant portion of the otherwise applicable payment  
25 obligation or by providing relevant rebates from the

1 defendant hardship and inequity adjustment account  
2 created under subsection (j) after payment of the  
3 otherwise applicable payment obligation, at the dis-  
4 cretion of the Administrator.

5 (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

6 (A) IN GENERAL.—Any defendant partici-  
7 pant in any tier may apply for an adjustment  
8 under this paragraph at any time during the  
9 period in which a payment obligation to the  
10 Fund remains outstanding and may qualify for  
11 such an adjustment by demonstrating to the  
12 satisfaction of the Administrator that the  
13 amount of its payment obligation would materi-  
14 ally and adversely affect the defendant partici-  
15 pant's ability to continue its business and to  
16 pay or satisfy its debts generally as and when  
17 they come due. Such an adjustment shall be in  
18 an amount that in the judgment of the Admin-  
19 istrator is reasonably necessary to prevent such  
20 material and adverse effect on the defendant  
21 participant's ability to continue its business and  
22 to pay or satisfy its debts generally as and  
23 when they come due.

24 (B) FACTORS TO CONSIDER.—In deter-  
25 mining whether to make an adjustment under



1           subparagraph (A) and the amount thereof, the  
2           Administrator shall consider—

3                   (i) the financial situation of the de-  
4                   fendant participant and its affiliated group  
5                   as shown in historical audited financial  
6                   statements, including income statement,  
7                   balance sheet, and statement of cash flow,  
8                   for the 3 fiscal years ending immediately  
9                   before the application and projected finan-  
10                  cial statements for the 3 fiscal years fol-  
11                  lowing the application;

12                  (ii) an analysis of capital spending  
13                  and fixed charge coverage on a historical  
14                  basis for the 3 fiscal years immediately  
15                  preceding a defendant participant's appli-  
16                  cation and for the 3 fiscal years following  
17                  the application;

18                  (iii) any payments or transfers of  
19                  property made, or obligations incurred,  
20                  within the preceding 6 years by the defend-  
21                  ant participant to or for the benefit of any  
22                  insider as defined under section 101(31) of  
23                  title 11, United States Code, or any affil-  
24                  iate as defined under section 101(2) of  
25                  title 11, United States Code;

1 (iv) any prior extraordinary trans-  
2 actions within the preceding 6 years involv-  
3 ing the defendant participant, including  
4 payments of extraordinary salaries, bo-  
5 nuses, or dividends;

6 (v) the defendant participant's ability  
7 to satisfy its payment obligation to the  
8 Fund by borrowing or financing with eq-  
9 uity capital, or through issuance of securi-  
10 ties of the defendant participant or its af-  
11 filiated group to the Fund;

12 (vi) the defendant participant's ability  
13 to delay discretionary capital spending;  
14 and

15 (vii) any other factor that the Admin-  
16 istrator considers relevant.

17 (C) TERM.—A financial hardship adjust-  
18 ment under this paragraph shall have a term of  
19 5 years unless the Administrator determines at  
20 the time the adjustment is made that a shorter  
21 or longer period is appropriate in the light of  
22 the financial condition of the defendant partici-  
23 pant and its affiliated group and other relevant  
24 factors, provided that a financial hardship ad-  
25 justment under this paragraph shall terminate

1 automatically in the event that the defendant  
2 participant holding the adjustment files a peti-  
3 tion under title 11, United States Code.

4 (D) RENEWAL.—A defendant participant  
5 may renew a hardship adjustment upon expira-  
6 tion by demonstrating that it remains justified.  
7 Such renewed hardship adjustments shall have  
8 a term of 5 years unless the Administrator de-  
9 termines at the time of the renewed adjustment  
10 that a shorter or longer period is appropriate in  
11 light of the financial condition of the defendant  
12 participant and its affiliated group and other  
13 relevant factors. A renewed financial hardship  
14 adjustment under this paragraph shall termi-  
15 nate automatically in the event that the defend-  
16 ant participant holding the adjustment files a  
17 petition under title 11, United States Code.

18 (E) PROCEDURE.—

19 (i) IN GENERAL.—The Administrator  
20 shall prescribe the information to be sub-  
21 mitted in applications for adjustments  
22 under this paragraph.

23 (ii) FINANCIAL INFORMATION.—All  
24 audited financial information required  
25 under this paragraph shall be as reported

1 by the defendant participant in its annual  
2 report filed with the Securities and Ex-  
3 change Commission in accordance with the  
4 Securities Exchange Act of 1934 (15  
5 U.S.C. 78a et seq.). Any defendant partici-  
6 pant that does not file reports with the Se-  
7 curities and Exchange Commission or  
8 which does not have audited financial  
9 statements shall submit financial state-  
10 ments prepared in accordance with gen-  
11 erally accepted accounting principles. The  
12 chairman, chief executive officer, and chief  
13 financial officer of the defendant partici-  
14 pant shall certify under penalty of law the  
15 completeness and accuracy of the financial  
16 statements provided under this subpara-  
17 graph.

18 (iii) CERTIFICATION.—The chairman,  
19 chief executive officer, and chief financial  
20 officer of the defendant participant shall  
21 certify that any projected information and  
22 analyses submitted to the Administrator  
23 were made in good faith and are reason-  
24 able and attainable.

25 (3) INEQUITY ADJUSTMENTS.—

1 (A) IN GENERAL.—A defendant partici-  
2 pant—

3 (i) may qualify for an adjustment  
4 based on inequity by demonstrating that  
5 the amount of its payment obligation  
6 under the statutory allocation is exception-  
7 ally inequitable—

8 (I) when measured against the  
9 amount of the likely cost to the de-  
10 fendant participant net of insurance  
11 of its future liability in the tort sys-  
12 tem in the absence of the Fund;

13 (II) when measured against the  
14 likely cost of past and potential future  
15 claims in the absence of this Act;

16 (III) when compared to the me-  
17 dian payment rate for all defendant  
18 participants in the same tier; or

19 (IV) when measured against the  
20 percentage of the prior asbestos ex-  
21 penditures of the defendant that were  
22 incurred with respect to claims that  
23 neither resulted in an adverse judg-  
24 ment against the defendant, nor were  
25 the subject of a settlement that re-

1           quired a payment to a plaintiff by or  
2           on behalf of that defendant;

3           (ii) shall qualify for a 2-tier main tier  
4           and a 2-tier subtier adjustment reducing  
5           the defendant participant's payment obli-  
6           gation based on inequity by demonstrating  
7           that not less than 95 percent of such per-  
8           son's prior asbestos expenditures arose  
9           from claims related to the manufacture  
10          and sale of railroad locomotives and re-  
11          lated products, so long as such person's  
12          manufacture and sale of railroad loco-  
13          motives and related products is temporally  
14          and causally remote, and for purposes of  
15          this clause, a person's manufacture and  
16          sale of railroad locomotives and related  
17          products shall be deemed to be temporally  
18          and causally remote if the asbestos claims  
19          historically and generally filed against such  
20          person relate to the manufacture and sale  
21          of railroad locomotives and related prod-  
22          ucts by an entity dissolved more than 25  
23          years before the date of enactment of this  
24          Act;

1           (iii) shall be granted a 2-tier adjust-  
2           ment reducing the defendant participant's  
3           payment obligation based on inequity by  
4           demonstrating that not less than 95 per-  
5           cent of such participant's prior asbestos  
6           expenditures arose from asbestos claims  
7           based on successor liability arising from a  
8           merger to which the participant or its  
9           predecessor was a party that occurred at  
10          least 30 years before the date of enactment  
11          of this Act, and that such prior asbestos  
12          expenditures exceed the inflation-adjusted  
13          value of the assets of the company from  
14          which such liability was derived in such  
15          merger, and upon such demonstration the  
16          Administrator shall grant such adjustment  
17          for the life of the Fund and amounts paid  
18          by such defendant participant prior to such  
19          adjustment in excess of its adjusted pay-  
20          ment obligation under this clause shall be  
21          credited against next succeeding required  
22          payment obligations; and

23          (iv) may, subject to the discretion of  
24          the Administrator, be exempt from any  
25          payment obligation if such defendant par-

1 participant establishes with the Administrator  
2 that—

3 (I) such participant has satisfied  
4 all past claims; and

5 (II) there is no reasonable likeli-  
6 hood in the absence of this Act of any  
7 future claims with costs for which the  
8 defendant participant might be re-  
9 sponsible.

10 (B) GUIDELINES.—

11 (i) IN GENERAL.—In determining  
12 which defendant participants may receive  
13 inequity adjustments, the Administrator  
14 shall give preference in the following order:

15 (I) Defendant participants that  
16 have significant insurance coverage  
17 applicable to asbestos claims, such  
18 that on the date of enactment of this  
19 Act, 80 percent or more of their avail-  
20 able primary insurance limits for as-  
21 bestos claims remains available.

22 (II) Defendant participants for  
23 which, under the guidance in section  
24 404(a)(2)(E), 75 percent of the prior  
25 asbestos expenditures of such defend-



1 ant participants were caused by or  
2 arose from premise liability claims.

3 (III) Defendant participants that  
4 can demonstrate that their prior as-  
5 bestos expenditures are inflated due to  
6 an unusually large, anomalous verdict  
7 and that such verdict has caused such  
8 defendants to be in a higher tier.

9 (IV) Any other factor determined  
10 reasonable by the Administrator to  
11 have caused a serious inequity.

12 (ii) CONSIDERATION.—In determining  
13 whether a defendant participant has sig-  
14 nificant insurance coverage applicable to  
15 asbestos claims such that on the date of  
16 enactment of this Act, 80 percent or more  
17 of their available primary insurance limits  
18 for asbestos claims remains available, the  
19 Administrator shall inquire and consider—

20 (I) the defendant participant's  
21 expected future liability in the tort  
22 system and the adequacy of insurance  
23 available measured against future li-  
24 ability; and

1 (II) whether the insurance cov-  
2 erage is uncontested, or based on a  
3 final judgment or settlement.

4 (C) PAYMENT RATE.—For purposes of  
5 subparagraph (A), the payment rate of a de-  
6 fendant participant is the payment amount of  
7 the defendant participant as a percentage of  
8 such defendant participant's gross revenues for  
9 the year ending December 31, 2002.

10 (D) TERM.—Subject to the annual avail-  
11 ability of funds in the defendant inequity ad-  
12 justment account established under subsection  
13 (j), an inequity adjustment under this sub-  
14 section shall have a term of 3 years.

15 (E) RENEWAL.—A defendant participant  
16 may renew an inequity adjustment every 3  
17 years by demonstrating that the adjustment re-  
18 mains justified.

19 (F) REINSTATEMENT.—

20 (i) IN GENERAL.—Following the ter-  
21 mination of an inequity adjustment under  
22 subparagraph (A), and during the funding  
23 period prescribed under subsection (a), the  
24 Administrator shall annually determine  
25 whether there has been a material change

1 in conditions which would support a find-  
 2 ing that the amount of the defendant par-  
 3 ticipant's payment under the statutory al-  
 4 location was not inequitable. Based on this  
 5 determination, the Administrator may,  
 6 consistent with the policies and legislative  
 7 intent underlying this Act, reinstate any or  
 8 all of the payment obligations of the de-  
 9 fendant participant as if the inequity ad-  
 10 justment had not been granted for that 3-  
 11 year period.

12 (ii) TERMS AND CONDITIONS.—In the  
 13 event of a reinstatement under clause (i),  
 14 the Administrator may require the defend-  
 15 ant participant to pay any part or all of  
 16 amounts not paid due to the inequity ad-  
 17 justment on such terms and conditions as  
 18 established by the Administrator.

19 (4) TIER II ADJUSTMENTS FOR WELL-INSURED  
 20 DEFENDANT PARTICIPANTS.—

21 (A) DEFINITIONS.—In this paragraph—

22 (i) the term “adjusted cash flow from  
 23 operating activities” means audited cash  
 24 flows from operating activities as set forth  
 25 in the Financial Accounting Standards

1 Board Statement of Financial Accounting  
2 Standards No. 95 in effect on the date of  
3 enactment of this Act, adjusted for  
4 amounts—

5 (I) increased by cash paid for in-  
6 terest and taxes to the extent that  
7 such amounts are included in cash  
8 flows from operating activities;

9 (II) increased by payments made  
10 for asbestos indemnity, defense costs,  
11 and any payments required under this  
12 Act, to the extent that such amounts  
13 are included in cash flows from oper-  
14 ating activities;

15 (III) increased by nonrecurring  
16 and unusual cash charges, including  
17 restructuring charges and other non-  
18 operating costs, to the extent that  
19 such amounts are included in cash  
20 flows from operating activities;

21 (IV) decreased by cash distribu-  
22 tions to minority interests to the ex-  
23 tent that such amounts are included  
24 in cash flows from investing activities

1 and cash flows from financing activi-  
2 ties;

3 (V) increased by cash proceeds  
4 on sales of assets net of related se-  
5 cured debt, affiliates, subsidiaries, and  
6 investments to the extent that such  
7 amounts are included in cash flows  
8 from investing and cash flows from fi-  
9 nancing activities;

10 (VI) increased by cash distribu-  
11 tions from nonconsolidated affiliates  
12 and investments to the extent that  
13 such amounts are included in cash  
14 flows from investing activities and  
15 cash flows from financing activities;

16 (VII) increased by net cash flow  
17 used by, and decreased by net cash  
18 flow gained from, working capital  
19 items to the extent such amounts are  
20 not already adjusted under this sub-  
21 paragraph and are included in cash  
22 flows from operating activities;

23 (VIII) increased by net cash flow  
24 used by, and decreased by net cash  
25 flow gained from, other nonworking

1 capital assets and liabilities, to the ex-  
2 tent such amounts are not already ad-  
3 justed under this subparagraph and  
4 are included in cash flows from oper-  
5 ating activities;

6 (IX) decreased by reimburse-  
7 ments or cash proceeds received from  
8 asbestos insurance policies for related  
9 expenses, to the extent that such  
10 amounts are included in cash flows  
11 from operating activities; and

12 (X) decreased by other nonop-  
13 erating cash income; and

14 (ii) the term “working capital” means  
15 current assets (excluding cash and short-  
16 term investments) less current liabilities  
17 (excluding short-term debt).

18 (B) ELECTION OF ALTERNATIVE ADJUST-  
19 MENT.—Except for defendant participants that  
20 consent to be assigned to Tier II under section  
21 204(i)(7)(A), a defendant participant assigned  
22 to subtier 3, 4, or 5 of Tier II may elect the  
23 adjustment under this paragraph, which shall  
24 apply instead of an adjustment under para-  
25 graph (3).

1 (C) ADJUSTMENT.—Subject to subpara-  
2 graphs (D) and (E), the annual payment obli-  
3 gation, taking into consideration the limitation  
4 under subsection (a)(2), of any defendant par-  
5 ticipant that elects the adjustment under this  
6 paragraph shall be adjusted so as not to exceed  
7 the greater of \$500,000 or 5 percent of that de-  
8 fendant participant's adjusted cash flow from  
9 operating activities for the most recent fiscal  
10 year ending on or before December 31, 2002, or  
11 for the most recent fiscal year.

12 (D) LIMITATION.—The aggregate total of  
13 adjustments under this paragraph in any year  
14 may not exceed \$100,000,000. If the aggregate  
15 amount of adjustments authorized under this  
16 paragraph exceeds \$100,000,000, the adjust-  
17 ment to which each defendant participant elect-  
18 ing such an adjustment shall be reduced pro  
19 rata until the aggregate of all adjustments  
20 equals \$100,000,000.

21 (E) SURCHARGES.—Defendant partici-  
22 pants receiving an adjustment under this para-  
23 graph shall also be subject to the guaranteed  
24 payment surcharge under subsection (m) and  
25 the bankruptcy trust surcharge under section

1           222(c). Such surcharges shall be based on the  
2           full amount of any adjustment to which the de-  
3           fendant participant would be entitled under  
4           subparagraph (C) without regard to the limita-  
5           tion under subparagraph (D).

6           (5) LIMITATION ON ADJUSTMENTS.—The ag-  
7           gregate total of inequity adjustments under para-  
8           graph (3) in effect in any given year shall not exceed  
9           \$200,000,000, except to the extent that additional  
10          monies are available for such adjustments as a re-  
11          sult of carryover of prior years' funds under sub-  
12          section (j)(3) or as a result of monies being made  
13          available in that year under subsection (k)(1)(A).

14          (6) RULEMAKING AND ADVISORY PANELS.—

15                (A) APPOINTMENT.—The Administrator  
16                may appoint a Financial Hardship Adjustment  
17                Panel and an Inequity Adjustment Panel to ad-  
18                vise the Administrator in carrying out this sub-  
19                section.

20                (B) MEMBERSHIP.—The membership of  
21                the panels appointed under subparagraph (A)  
22                may overlap.

23                (C) COORDINATION.—The panels ap-  
24                pointed under subparagraph (A) shall coordi-  
25                nate their deliberations and advice.



1 (D) RULES.—The Administrator may  
2 adopt rules consistent with this Act to make the  
3 determination of hardship and inequity adjust-  
4 ments more efficient and predictable.

5 (e) LIMITATION ON LIABILITY.—The liability of each  
6 defendant participant to pay to the Fund shall be limited  
7 to the payment obligations under this Act, and, except as  
8 provided in subsection (f) and section 203(b)(2)(D), no  
9 defendant participant shall have any liability for the pay-  
10 ment obligations of any other defendant participant.

11 (f) CONSOLIDATION OF PAYMENTS.—

12 (1) IN GENERAL.—For purposes of determining  
13 the payment levels of defendant participants, any af-  
14 filiated group including 1 or more defendant partici-  
15 pants may irrevocably elect, as part of the submis-  
16 sions to be made under paragraphs (1) and (3) of  
17 subsection (i), to report on a consolidated basis all  
18 of the information necessary to determine the pay-  
19 ment level under this subtitle and pay to the Fund  
20 on a consolidated basis.

21 (2) ELECTION.—If an affiliated group elects  
22 consolidation as provided in this subsection—

23 (A) for purposes of this Act other than  
24 this subsection, the affiliated group shall be  
25 treated as if it were a single participant, includ-

1 ing with respect to the assessment of a single  
2 annual payment under this subtitle for the en-  
3 tire affiliated group;

4 (B) the ultimate parent of the affiliated  
5 group shall prepare and submit each submission  
6 to be made under subsection (i) on behalf of the  
7 entire affiliated group and shall be solely liable,  
8 as between the Administrator and the affiliated  
9 group only, for the payment of the annual  
10 amount due from the affiliated group under this  
11 subtitle, except that, if the ultimate parent does  
12 not pay when due any payment obligation for  
13 the affiliated group, the Administrator shall  
14 have the right to seek payment of all or any  
15 portion of the entire amount due (as well as  
16 any other amount for which the affiliated group  
17 may be liable under sections 223 and 224) from  
18 any member of the affiliated group;

19 (C) all members of the affiliated group  
20 shall be identified in the submission under sub-  
21 section (i) and shall certify compliance with this  
22 subsection and the Administrator's regulations  
23 implementing this subsection; and

24 (D) the obligations under this subtitle shall  
25 not change even if, after the date of enactment

1           of this Act, the beneficial ownership interest be-  
2           tween any members of the affiliated group shall  
3           change.

4           (3) CAUSE OF ACTION.—Notwithstanding sec-  
5           tion 221(e), this Act shall not preclude actions  
6           among persons within an affiliated group with re-  
7           spect to the payment obligations under this Act.

8           (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-  
9           TURES.—

10           (1) IN GENERAL.—For purposes of determining  
11           a defendant participant’s prior asbestos expendi-  
12           tures, the Administrator shall prescribe such rules  
13           as may be necessary or appropriate to assure that  
14           payments by indemnitors before December 31, 2002,  
15           shall be counted as part of the indemnitor’s prior as-  
16           bestos expenditures, rather than the indemnitee’s  
17           prior asbestos expenditures, in accordance with this  
18           subsection.

19           (2) INDEMNIFIABLE COSTS.—If an indemnitor  
20           has paid or reimbursed to an indemnitee any  
21           indemnifiable cost or otherwise made a payment on  
22           behalf of or for the benefit of an indemnitee to a  
23           third party for an indemnifiable cost before Decem-  
24           ber 31, 2002, the amount of such indemnifiable cost

1 shall be solely for the account of the indemnitor for  
2 purposes under this Act.

3 (3) INSURANCE PAYMENTS.—When computing  
4 the prior asbestos expenditures with respect to an  
5 asbestos claim, any amount paid or reimbursed by  
6 insurance shall be solely for the account of the  
7 indemnitor, even if the indemnitor would have no di-  
8 rect right to the benefit of the insurance, if—

9 (A) such insurance has been paid or reim-  
10 bursed to the indemnitor or the indemnitee, or  
11 paid on behalf of or for the benefit of the  
12 indemnitee; and

13 (B) the indemnitor has either, with respect  
14 to such asbestos claim or any similar asbestos  
15 claim, paid or reimbursed to its indemnitee any  
16 indemnifiable cost or paid to any third party on  
17 behalf of or for the benefit of the indemnitee  
18 any indemnifiable cost.

19 (4) TREATMENT OF CERTAIN EXPENDI-  
20 TURES.—Notwithstanding any other provision of  
21 this Act, where—

22 (A) an indemnitor entered into a stock  
23 purchase agreement in 1988 that involved the  
24 sale of the stock of businesses that produced  
25 friction and other products; and

1 (B) the stock purchase agreement provided  
 2 that the indemnitor indemnified the indemnitee  
 3 and its affiliates for losses arising from various  
 4 matters, including asbestos claims—

5 (i) asserted before the date of the  
 6 agreement; and

7 (ii) filed after the date of the agree-  
 8 ment and prior to the 10-year anniversary  
 9 of the stock sale,

10 then the prior asbestos expenditures arising from the  
 11 asbestos claims described in clauses (i) and (ii) shall  
 12 not be for the account of either the indemnitor or  
 13 indemnitee.

14 (h) MINIMUM ANNUAL PAYMENTS.—

15 (1) IN GENERAL.—The aggregate annual pay-  
 16 ments of defendant participants to the Fund shall be  
 17 at least \$3,000,000,000 for each calendar year in  
 18 the first 30 years of the Fund, or until such shorter  
 19 time as the condition set forth in subsection (a)(2)  
 20 is attained.

21 (2) GUARANTEED PAYMENT ACCOUNT.—To the  
 22 extent payments in accordance with sections 202  
 23 and 203 (as modified by subsections (b), (d), (f),  
 24 (g), and (m) of this section) fail in any year to raise  
 25 at least \$3,000,000,000, after applicable reductions

1 or adjustments have been taken according to sub-  
 2 sections (d) and (m), the balance needed to meet  
 3 this required minimum aggregate annual payment  
 4 shall be obtained from the defendant guaranteed  
 5 payment account established under subsection (k).

6 (3) GUARANTEED PAYMENT SURCHARGE.—To  
 7 the extent the procedure set forth in paragraph (2)  
 8 is insufficient to satisfy the required minimum ag-  
 9 gregate annual payment, after applicable reductions  
 10 or adjustments have been taken according to sub-  
 11 sections (d) and (m), the Administrator shall unless  
 12 the Administrator implements a funding holiday  
 13 under section 205(b), assess a guaranteed payment  
 14 surcharge under subsection (l).

15 (i) PROCEDURES FOR MAKING PAYMENTS.—

16 (1) INITIAL YEAR: TIERS II–VI.—

17 (A) IN GENERAL.—Not later than 90 days  
 18 after enactment of this Act, each defendant  
 19 participant that is included in Tiers II, III, IV,  
 20 V, or VI shall file with the Administrator—

21 (i) a statement of whether the defend-  
 22 ant participant irrevocably elects to report  
 23 on a consolidated basis under subsection  
 24 (f);

1 (ii) a good-faith estimate of its prior  
2 asbestos expenditures;

3 (iii) a statement of its 2002 revenues,  
4 determined in accordance with section  
5 203(a)(2);

6 (iv) payment in the amount specified  
7 in section 203 for the lowest subtier of the  
8 tier within which the defendant participant  
9 falls, except that if the defendant partici-  
10 pant, or the affiliated group including the  
11 defendant participant, had 2002 revenues  
12 exceeding \$3,000,000,000, it or its affili-  
13 ated group shall pay the amount specified  
14 for Subtier 3 of Tiers II, III, or IV or  
15 Subtier 2 of Tiers V or VI, depending on  
16 the applicable Tier; and

17 (v) a signature page personally  
18 verifying the truth of the statements and  
19 estimates described under this subpara-  
20 graph, as required under section 404 of  
21 the Sarbanes-Oxley Act of 2002 (15  
22 U.S.C. 7201 et seq.).

23 (B) RELIEF.—

24 (i) IN GENERAL.—The Administrator  
25 shall establish procedures to grant a de-

1           fendant participant relief from its initial  
2           payment obligation if the participant shows  
3           that—

4                   (I) the participant is likely to  
5                   qualify for a financial hardship ad-  
6                   justment; and

7                   (II) failure to provide interim re-  
8                   lief would cause severe irreparable  
9                   harm.

10                   (ii) JUDICIAL RELIEF.—The Adminis-  
11                   trator’s refusal to grant relief under clause  
12                   (i) is subject to immediate judicial review  
13                   under section 303.

14           (2) INITIAL YEAR: TIER I.—Not later than 60  
15           days after enactment of this Act, each debtor shall  
16           file with the Administrator—

17                   (A) a statement identifying the bankruptcy  
18                   case(s) associated with the debtor;

19                   (B) a statement whether its prior asbestos  
20                   expenditures exceed \$1,000,000;

21                   (C) a statement whether it has material  
22                   continuing business operations and, if not,  
23                   whether it holds cash or other assets that have  
24                   been allocated or earmarked for asbestos settle-  
25                   ments;



1 (D) in the case of debtors falling within  
2 Subtier 1 of Tier I—

3 (i) a statement of the debtor's 2002  
4 revenues, determined in accordance with  
5 section 203(a)(2); and

6 (ii) a payment under section  
7 203(b)(2)(B);

8 (E) in the case of debtors falling within  
9 Subtier 2 of Tier I, an assignment of its assets  
10 under section 203(b)(3)(B);

11 (F) in the case of debtors falling within  
12 Subtier 3 of Tier I, a payment under section  
13 203(b)(4)(B), and a statement of how such  
14 payment was calculated; and

15 (G) a signature page personally verifying  
16 the truth of the statements and estimates de-  
17 scribed under this paragraph, as required under  
18 section 404 of the Sarbanes-Oxley Act of 2002  
19 (15 U.S.C. 7201 et seq.).

20 (3) INITIAL YEAR: TIER VII.—Not later than 90  
21 days after enactment of this Act, each defendant  
22 participant in Tier VII shall file with the Adminis-  
23 trator—

1 (A) a good faith estimate of all payments  
2 of the type described in section 203(h)(1) (as  
3 modified by section 203(h)(6));

4 (B) a statement of revenues calculated in  
5 accordance with sections 203(a)(2) and 203(h);  
6 and

7 (C) payment in the amount specified in  
8 section 203(h).

9 (4) NOTICE TO PARTICIPANTS.—Not later than  
10 240 days after enactment of this Act, the Adminis-  
11 trator shall—

12 (A) directly notify all reasonably identifi-  
13 able defendant participants of the requirement  
14 to submit information necessary to calculate the  
15 amount of any required payment to the Fund;  
16 and

17 (B) publish in the Federal Register a no-  
18 tice—

19 (i) setting forth the criteria in this  
20 Act, and as prescribed by the Adminis-  
21 trator in accordance with this Act, for pay-  
22 ing under this subtitle as a defendant par-  
23 ticipant and requiring any person who may  
24 be a defendant participant to submit such  
25 information; and

1 (ii) that includes a list of all defend-  
2 ant participants notified by the Adminis-  
3 trator under subparagraph (A), and pro-  
4 vides for 30 days for the submission by the  
5 public of comments or information regard-  
6 ing the completeness and accuracy of the  
7 list of identified defendant participants.

8 (5) RESPONSE REQUIRED.—

9 (A) IN GENERAL.—Any person who re-  
10 ceives notice under paragraph (4)(A), and any  
11 other person meeting the criteria specified in  
12 the notice published under paragraph (4)(B),  
13 shall provide the Administrator with an address  
14 to send any notice from the Administrator in  
15 accordance with this Act and all the informa-  
16 tion required by the Administrator in accord-  
17 ance with this subsection no later than the ear-  
18 lier of—

19 (i) 30 days after the receipt of direct  
20 notice; or

21 (ii) 30 days after the publication of  
22 notice in the Federal Register.

23 (B) CERTIFICATION.—The response sub-  
24 mitted under subparagraph (A) shall be signed  
25 by a responsible corporate officer, general part-

ner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator’s audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

1                   (ii) PUBLIC NOTICE.—Not later than  
2                   7 days after sending the notification of ini-  
3                   tial determination to defendant partici-  
4                   pants, the Administrator shall publish in  
5                   the Federal Register a notice listing the  
6                   defendant participants that have been sent  
7                   such notification, and the initial deter-  
8                   mination identifying the tier and subtier  
9                   assignment and annual payment obligation  
10                  of each identified participant.

11                (B) NO RESPONSE; INCOMPLETE RE-  
12                SPONSE.—If no response in accordance with  
13                paragraph (5) is received from a defendant par-  
14                ticipant, or if the response is incomplete, the  
15                initial determination shall be based on the best  
16                information available to the Administrator.

17                (C) PAYMENTS.—Within 30 days of receiv-  
18                ing a notice of initial determination requiring  
19                payment, the defendant participant shall pay  
20                the Administrator the amount required by the  
21                notice, after deducting any previous payment  
22                made by the participant under this subsection.  
23                If the amount that the defendant participant is  
24                required to pay is less than any previous pay-  
25                ment made by the participant under this sub-

1 section, the Administrator shall credit any ex-  
2 cess payment against the future payment obli-  
3 gations of that defendant participant. The  
4 pendency of a petition for rehearing under  
5 paragraph (10) shall not stay the obligation of  
6 the participant to make the payment specified  
7 in the Administrator's notice.

8 (7) EXEMPTIONS FOR INFORMATION RE-  
9 QUIRED.—

10 (A) PRIOR ASBESTOS EXPENDITURES.—In  
11 lieu of submitting information related to prior  
12 asbestos expenditures as may be required for  
13 purposes of this subtitle, a nondebtor defendant  
14 participant may consent to be assigned to Tier  
15 II.

16 (B) REVENUES.—In lieu of submitting in-  
17 formation related to revenues as may be re-  
18 quired for purposes of this subtitle, a nondebtor  
19 defendant participant may consent to be as-  
20 signed to Subtier 1 of the defendant partici-  
21 pant's applicable tier.

22 (8) NEW INFORMATION.—

23 (A) EXISTING PARTICIPANT.—The Admin-  
24 istrator shall adopt procedures for requiring ad-

ditional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's

1 determination under this subsection of the applicable  
 2 tier or subtier of the Administrator's determination  
 3 under subsection (d) of a financial hardship or in-  
 4 equity adjustment, and of the Administrator's deter-  
 5 mination under subsection (m) of a distributor's ad-  
 6 justment, if the request for rehearing is filed within  
 7 30 days after the defendant participant's receipt of  
 8 notice from the Administrator of the determination.  
 9 A defendant participant may not file an action under  
 10 section 303 unless the defendant participant re-  
 11 quests a rehearing under this paragraph. The Ad-  
 12 ministrator shall publish a notice in the Federal  
 13 Register of any change in a defendant participant's  
 14 tier or subtier assignment or payment obligation as  
 15 a result of a rehearing.

16 (j) DEFENDANT INEQUITY ADJUSTMENT AC-  
 17 COUNT.—

18 (1) IN GENERAL.—To the extent the total pay-  
 19 ments by defendant participants in any given year  
 20 exceed the minimum aggregate annual payments re-  
 21 quired under subsection (h), excess monies up to a  
 22 maximum of \$200,000,000 in any such year shall be  
 23 placed in a defendant inequity adjustment account  
 24 established within the Fund by the Administrator.



1           (2) USE OF ACCOUNT MONIES.—Monies from  
2           the defendant inequity adjustment account shall be  
3           preserved and administered like the remainder of the  
4           Fund, but shall be reserved and may be used only—

5                   (A) to make up for any relief granted to a  
6           defendant participant for demonstrated inequity  
7           under subsection (d) or to reimburse any de-  
8           fendant participant granted such relief after its  
9           payment of the amount otherwise due; and

10                   (B) if the condition set forth in subsection  
11           (a)(2) is met, for any purpose that the Fund  
12           may serve under this Act.

13           (3) CARRYOVER OF UNUSED FUNDS.—To the  
14           extent the Administrator does not, in any given year,  
15           use all of the funds allocated to the account under  
16           paragraph (1) for adjustments granted under sub-  
17           section (d), remaining funds in the account shall be  
18           carried forward for use by the Administrator for ad-  
19           justments in subsequent years.

20           (k) DEFENDANT GUARANTEED PAYMENT AC-  
21           COUNT.—

22                   (1) IN GENERAL.—Subject to subsections (h)  
23           and (j), if there are excess monies paid by defendant  
24           participants in any given year, including any bank-

1       ruptcy trust credits that may be due under section  
2       222(d), such monies—

3               (A) at the discretion of the Administrator,  
4       may be used to provide additional adjustments  
5       under subsection (d), up to a maximum aggregate  
6       of \$50,000,000 in such year; and

7               (B) to the extent not used under subpara-  
8       graph (A), shall be placed in a defendant guar-  
9       anteed payment account established within the  
10      Fund by the Administrator.

11      (2) USE OF ACCOUNT MONIES.—Monies from  
12      the defendant guaranteed payment account shall be  
13      preserved and administered like the remainder of the  
14      Fund, but shall be reserved and may be used only—

15              (A) to ensure the minimum aggregate an-  
16      nual payment required under subsection (h),  
17      after applicable reductions or adjustments have  
18      been taken according to subsections (d) and  
19      (m) is reached each year; and

20              (B) if the condition set forth in subsection  
21      (a)(2) is met, for any purpose that the Fund  
22      may serve under this Act.

23      (l) GUARANTEED PAYMENT SURCHARGE.—

24              (1) IN GENERAL.—To the extent there are in-  
25      sufficient monies in the defendant guaranteed pay-

1        ment account established in subsection (k) to attain  
2        the minimum aggregate annual payment required  
3        under subsection (h) in any given year, the Adminis-  
4        trator shall, unless the Administrator implements a  
5        funding holiday under section 205(b), impose on  
6        each defendant participant a surcharge as necessary  
7        to raise the balance required to attain the minimum  
8        aggregate annual payment required under subsection  
9        (h) as provided in this subsection. Any such sur-  
10       charge shall be imposed on a pro rata basis, in ac-  
11       cordance with each defendant participant's relative  
12       annual liability under sections 202 and 203 (as  
13       modified by subsections (b), (d), (f), (g), and (m) of  
14       this section).

15                (2) LIMITATION.—

16                (A) DEFINITION.—In this paragraph, the  
17        term “economically distressed industry” means  
18        an industry, defined by a primary 5-digit  
19        NAICS code, wherein 2 or more defendant par-  
20        ticipants are in Subtier 1 of Tier II under sec-  
21        tions 202 and 203, and at least  $\frac{2}{3}$  of such Tier  
22        II defendant participants suffered net operating  
23        losses in their United States manufacturing  
24        business in 2005.

1 (B) IN GENERAL.—In no case shall the  
2 Administrator—

3 (i) impose a surcharge under this sub-  
4 section on any defendant participant in-  
5 cluded in Subtier 3 of Tier V or VI as de-  
6 scribed under section 203; or

7 (ii) notwithstanding paragraph (1),  
8 impose in any year a surcharge under this  
9 subsection on any defendant participant in  
10 an economically distressed industry in ex-  
11 cess of 15 percent of the amount set forth  
12 for Subtier 1 of Tier II defendant partici-  
13 pants under section 203(c)(2)(A).

14 (C) REALLOCATION.—Any amount not im-  
15 posed under subparagraph (B) shall be reallo-  
16 cated on a pro rata basis, in accordance with  
17 each defendant participant's (other than a de-  
18 fendant participant described under subpara-  
19 graph (B) relative annual liability under sec-  
20 tions 202 and 203 (as modified by subsections  
21 (b), (d), (f), and (g) of this section).

22 (3) CERTIFICATION.—

23 (A) IN GENERAL.—Before imposing a  
24 guaranteed payment surcharge under this sub-  
25 section, the Administrator shall certify that he

1 or she has used all reasonable efforts to collect  
2 mandatory payments for all defendant partici-  
3 pants, including by using the authority in sub-  
4 section (i)(9) of this section and section 223.

5 (B) NOTICE AND COMMENT.—Before mak-  
6 ing a final certification under subparagraph  
7 (C), the Administrator shall publish a notice in  
8 the Federal Register of a proposed certification  
9 and provide in such notice for a public comment  
10 period of 30 days.

11 (C) FINAL CERTIFICATION.—

12 (i) IN GENERAL.—The Administrator  
13 shall publish a notice of the final certifi-  
14 cation in the Federal Register after consid-  
15 eration of all comments submitted under  
16 subparagraph (B).

17 (ii) WRITTEN NOTICE.—Not later  
18 than 30 days after publishing any final  
19 certification under clause (i), the Adminis-  
20 trator shall provide each defendant partici-  
21 pant with written notice of that defendant  
22 participant's payment, including the  
23 amount of any surcharge.

24 (m) ADJUSTMENTS FOR DISTRIBUTORS.—

1           (1) DEFINITION.—In this subsection, the term  
2       “distributor” means a person—

3                   (A) whose prior asbestos expenditures arise  
4       exclusively from the sale of products manufac-  
5       tured by others;

6                   (B) who did not prior to December 31,  
7       2002, sell raw asbestos or a product containing  
8       more than 95 percent asbestos by weight;

9                   (C) whose prior asbestos expenditures did  
10      not arise out of—

11                   (i) the manufacture, installation, re-  
12      pair, reconditioning, maintaining, serv-  
13      icing, constructing, or remanufacturing of  
14      any product;

15                   (ii) the control of the design, speci-  
16      fication, or manufacture of any product; or

17                   (iii) the sale or resale of any product  
18      under, as part of, or under the auspices of,  
19      its own brand, trademark, or service mark;  
20      and

21                   (D) who is not subject to assignment  
22      under section 202 to Tier I, II, III or VII.

23       (2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

24                   (A) IN GENERAL.—Notwithstanding sec-  
25      tion 202, the Administrator shall assign a dis-

1       tributor to a Tier for purposes of this title  
2       under the procedures set forth in this para-  
3       graph.

4               (B) DESIGNATION.—After a final deter-  
5       mination by the Administrator under section  
6       204(i), any person who is, or any affiliated  
7       group in which every member is, a distributor  
8       may apply to the Administrator for adjustment  
9       of its Tier assignment under this subsection.  
10      Such application shall be prepared in accord-  
11      ance with such procedures as the Administrator  
12      shall promulgate by rule. Once the Adminis-  
13      trator designates a person or affiliated group as  
14      a distributor under this subsection, such des-  
15      ignation and the adjustment of tier assignment  
16      under this subsection are final.

17              (C) PAYMENTS.—Any person or affiliated  
18      group that seeks adjustment of its Tier assign-  
19      ment under this subsection shall pay all  
20      amounts required of it under this title until a  
21      final determination by the Administrator is  
22      made under this subsection. Such payments  
23      may not be stayed pending any appeal. The Ad-  
24      ministrator shall grant any person or affiliated  
25      group a refund or credit of any payments made

1 if such adjustment results in a lower payment  
2 obligation.

3 (D) ADJUSTMENT.—Subject to paragraph  
4 (3), any person or affiliated group that the Ad-  
5 ministrator has designated as a distributor  
6 under this subsection shall be given an adjust-  
7 ment of Tier assignment as follows:

8 (i) A distributor that but for this sub-  
9 section would be assigned to Tier IV shall  
10 be deemed assigned to Tier V.

11 (ii) A distributor that but for this  
12 subsection would be assigned to Tier V  
13 shall be deemed assigned to Tier VI.

14 (iii) A distributor that but for this  
15 subsection would be assigned to Tier VI  
16 shall be deemed assigned to no Tier and  
17 shall have no obligation to make any pay-  
18 ment to the Fund under this Act.

19 (E) EXCLUSIVE TO INEQUITY ADJUST-  
20 MENT.—Any person or affiliated group des-  
21 ignated by the Administrator as a distributor  
22 under this subsection shall not be eligible for an  
23 inequity adjustment under subsection 204(d).

24 (3) LIMITATION ON ADJUSTMENTS.—The ag-  
25 gregate total of distributor adjustments under this



1 subsection in effect in any given year shall not ex-  
2 ceed \$50,000,000. If the aggregate total of distribu-  
3 tors adjustments under this subsection would other-  
4 wise exceed \$50,000,000, then each distributor's ad-  
5 justment shall be reduced pro rata until the aggre-  
6 gate of all adjustments equals \$50,000,000.

7 (4) REHEARING.—A defendant participant has  
8 a right to obtain a rehearing of the Administrator's  
9 determination on an adjustment under this sub-  
10 section under the procedures prescribed in sub-  
11 section (i)(10).

12 **SEC. 205. STEPDOWN AND FUNDING HOLIDAYS.**

13 (a) STEPDOWN.—

14 (1) IN GENERAL.—

15 (A) REDUCTION.—Subject to paragraph  
16 (2), the minimum aggregate annual funding ob-  
17 ligation under section 204(h) shall be reduced  
18 by 10 percent of the initial minimum aggregate  
19 funding obligation at the end of the 10th, 15th,  
20 20th, and 25th years after the date of enact-  
21 ment of this Act. Except as provided under sub-  
22 paragraph (B), the reductions under this para-  
23 graph shall be applied on an equal pro rata  
24 basis to the funding obligations of all defendant  
25 participants.

1           (B) CALCULATION.—The reductions under  
2       this subsection shall not apply to defendant  
3       participants in Tier I, Subtiers 2 and 3, and  
4       class action trusts. For defendant participants  
5       whose payment obligation has been limited  
6       under section 204(a)(2) or who have received a  
7       financial hardship adjustment under section  
8       204(d)(2), aggregate potential reductions under  
9       this subsection shall be calculated on the basis  
10      of the defendant participant's tier and subtier  
11      without regard to such limitation or adjust-  
12      ment. If the aggregate potential reduction  
13      under this subsection exceeds the reduction in  
14      the defendant participant's payment obligation  
15      due to the limitation under section 204(a)(2)  
16      and the financial hardship adjustment under  
17      section 204(d)(2), then the defendant partici-  
18      pant's payment obligation shall be further re-  
19      duced by the difference between the potential  
20      reduction provided under this subsection and  
21      the reductions that the defendant participant  
22      has already received due to the application of  
23      the limitation provided in section 204(a)(2) and  
24      the financial hardship adjustment provided  
25      under section 204(d)(2). If the reduction in the

1           defendant participant's payment obligation due  
2           to the limitation provided in section 204(a)(2)  
3           and any financial hardship adjustment provided  
4           under section 204(d)(2) exceeds the amount of  
5           the reduction provided in this subsection, then  
6           the defendant participant's payment obligation  
7           shall not be further reduced under this para-  
8           graph.

9           (2) LIMITATION.—The Administrator shall sus-  
10          pend, cancel, reduce, or delay any reduction under  
11          paragraph (1) if at any time the Administrator  
12          finds, in accordance with subsection (c), that such  
13          action is necessary and appropriate to ensure that  
14          the assets of the Fund and expected future pay-  
15          ments remain sufficient to satisfy the Fund's antici-  
16          pated obligations.

17          (b) FUNDING HOLIDAYS.—

18               (1) IN GENERAL.—If the Administrator deter-  
19          mines, at any time after 10 years following the date  
20          of enactment of this Act, that the assets of the Fund  
21          at the time of such determination and expected fu-  
22          ture payments, taking into consideration any reduc-  
23          tions under subsection (a), are sufficient to satisfy  
24          the Fund's anticipated obligations without the need  
25          for all, or any portion of, that year's payment other-

1 wise required under this subtitle, the Administrator  
2 shall reduce or waive all or any part of the payments  
3 required from defendant participants for that year.

4 (2) ANNUAL REVIEW.—The Administrator shall  
5 undertake the review required by this subsection and  
6 make the necessary determination under paragraph  
7 (1) every year.

8 (3) LIMITATIONS ON FUNDING HOLIDAYS.—

9 (A) IN GENERAL.—Except as provided  
10 under subparagraph (B), any reduction or waiv-  
11 er of the defendant participants' funding obliga-  
12 tions shall—

13 (i) be made only to the extent the Ad-  
14 ministrator determines that the Fund will  
15 still be able to satisfy all of its anticipated  
16 obligations; and

17 (ii) be applied on an equal pro rata  
18 basis to the funding obligations of all de-  
19 fendant participants, except with respect to  
20 defendant participants in Subtiers 2 and 3  
21 of Tier I and class action trusts, for that  
22 year.

23 (B) CALCULATION.—The reductions or  
24 waivers provided under this subsection shall not  
25 apply to defendant participants in Tier I,

1           Subtiers 2 and 3, and class action trusts. For  
2           defendant participants whose payment obliga-  
3           tion has been limited under section 204(a)(2) or  
4           who have received a financial hardship adjust-  
5           ment under section 204(d)(2), aggregate poten-  
6           tial reductions under this subsection shall be  
7           calculated on the basis of the defendant partici-  
8           pant's tier and subtier without regard to such  
9           limitation or adjustment. If the aggregate po-  
10          tential reductions or waivers under this sub-  
11          section exceed the reduction in the defendant  
12          participant's payment obligation due to the lim-  
13          itation under section 204(a)(2) and the finan-  
14          cial hardship adjustment under section  
15          204(d)(2), then the defendant participant's pay-  
16          ment obligation shall be further reduced by the  
17          difference between the potential reductions or  
18          waivers provided under this subsection and the  
19          reductions that the defendant participant has  
20          already received due to the application of the  
21          limitation provided in section 204(a)(2) and the  
22          financial hardship adjustment provided under  
23          section 204(d)(2). If the reduction in the de-  
24          fendant participant's payment obligation due to  
25          the limitation provided in section 204(a)(2) and

1           any of the financial hardship adjustment pro-  
2           vided under section 204(d)(2) exceeds the  
3           amount of the reductions or waivers provided in  
4           this subsection, then the defendant participant's  
5           payment obligation shall not be further reduced  
6           under this paragraph.

7           (4) NEW INFORMATION.—If at any time the  
8           Administrator determines that a reduction or waiver  
9           under this section may cause the assets of the Fund  
10          and expected future payments to decrease to a level  
11          at which the Fund may not be able to satisfy all of  
12          its anticipated obligations, the Administrator shall  
13          revoke all or any part of such reduction or waiver  
14          to the extent necessary to ensure that the Fund's  
15          obligations are met. Such revocations shall be ap-  
16          plied on an equal pro rata basis to the funding obli-  
17          gations of all defendant participants, except defend-  
18          ant participants in Subtiers 2 and 3 of Tier I and  
19          class action trusts, for that year.

20          (c) CERTIFICATION.—

21               (1) IN GENERAL.—Before suspending, can-  
22               celing, reducing, or delaying any reduction under  
23               subsection (a) or granting or revoking a reduction or  
24               waiver under subsection (b), the Administrator shall

1 certify that the requirements of this section are sat-  
2 isfied.

3 (2) NOTICE AND COMMENT.—Before making a  
4 final certification under this subsection, the Admin-  
5 istrator shall publish a notice in the Federal Reg-  
6 ister of a proposed certification and a statement of  
7 the basis therefor and provide in such notice for a  
8 public comment period of 30 days.

9 (3) FINAL CERTIFICATION.—

10 (A) IN GENERAL.—The Administrator  
11 shall publish a notice of the final certification in  
12 the Federal Register after consideration of all  
13 comments submitted under paragraph (2).

14 (B) WRITTEN NOTICE.—Not later than 30  
15 days after publishing any final certification  
16 under subparagraph (A), the Administrator  
17 shall provide each defendant participant with  
18 written notice of that defendant's funding obli-  
19 gation for that year.

20 **SEC. 206. ACCOUNTING TREATMENT.**

21 Defendant participants payment obligations to the  
22 Fund shall be subject to discounting under the applicable  
23 accounting guidelines for generally accepted accounting  
24 purposes and statutory accounting purposes for each de-  
25 fendant participant. This section shall in no way reduce

1 the amount of monetary payments to the Fund by defend-  
 2 ant participants as required under section 202(a)(2).

## 3       **Subtitle B—Asbestos Insurers** 4                   **Commission**

### 5 **SEC. 210. DEFINITION.**

6       In this subtitle, the term “captive insurance com-  
 7 pany” means a company—

8           (1) whose entire beneficial interest is owned on  
 9       the date of enactment of this Act, directly or indi-  
 10      rectly, by a defendant participant or by the ultimate  
 11      parent or the affiliated group of a defendant partici-  
 12      pant;

13          (2) whose primary commercial business during  
 14      the period from calendar years 1940 through 1986  
 15      was to provide insurance to its ultimate parent or  
 16      affiliated group, or any portion of the affiliated  
 17      group or a combination thereof; and

18          (3) that was incorporated or operating no later  
 19      than December 31, 2003.

### 20 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-** 21                   **MISSION.**

22      (a) ESTABLISHMENT.—There is established the As-  
 23      bestos Insurers Commission (referred to in this subtitle  
 24      as the “Commission”) to carry out the duties described  
 25      in section 212.



1 (b) MEMBERSHIP.—

2 (1) APPOINTMENT.—The Commission shall be  
3 composed of 5 members who shall be appointed by  
4 the President, by and with the advice and consent  
5 of the Senate.

6 (2) QUALIFICATIONS.—

7 (A) EXPERTISE.—Members of the Com-  
8 mission shall have sufficient expertise to fulfill  
9 their responsibilities under this subtitle.

10 (B) CONFLICT OF INTEREST.—

11 (i) IN GENERAL.—No member of the  
12 Commission appointed under paragraph  
13 (1) may be an employee or immediate fam-  
14 ily member of an employee of an insurer  
15 participant. No member of the Commission  
16 shall be a shareholder of any insurer par-  
17 ticipant. No member of the Commission  
18 shall be a former officer or director, or a  
19 former employee or former shareholder of  
20 any insurer participant who was such an  
21 employee, shareholder, officer, or director  
22 at any time during the 2-year period end-  
23 ing on the date of the appointment, unless  
24 that is fully disclosed before consideration

1 in the Senate of the nomination for ap-  
2 pointment to the Commission.

3 (ii) DEFINITION.—In clause (i), the  
4 term “shareholder” shall not include a  
5 broadly based mutual fund that includes  
6 the stocks of insurer participants as a por-  
7 tion of its overall holdings.

8 (C) FEDERAL EMPLOYMENT.—A member  
9 of the Commission may not be an officer or em-  
10 ployee of the Federal Government, except by  
11 reason of membership on the Commission.

12 (3) PERIOD OF APPOINTMENT.—Members shall  
13 be appointed for the life of the Commission.

14 (4) VACANCIES.—Any vacancy in the Commis-  
15 sion shall be filled in the same manner as the origi-  
16 nal appointment.

17 (5) CHAIRMAN.—The President shall select a  
18 Chairman from among the members of the Commis-  
19 sion.

20 (c) MEETINGS.—

21 (1) INITIAL MEETING.—Not later than 30 days  
22 after the date on which all members of the Commis-  
23 sion have been appointed, the Commission shall hold  
24 its first meeting.

1           (2) SUBSEQUENT MEETINGS.—The Commission  
2           shall meet at the call of the Chairman, as necessary  
3           to accomplish the duties under section 212.

4           (3) QUORUM.—No business may be conducted  
5           or hearings held without the participation of a ma-  
6           jority of the members of the Commission.

7   **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

8           (a) DETERMINATION OF INSURER PAYMENT OBLIGA-  
9   TIONS.—

10           (1) IN GENERAL.—

11           (A) DEFINITIONS.—For the purposes of  
12           this Act, the terms “insurer” and “insurer par-  
13           ticipant” shall, unless stated otherwise, include  
14           direct insurers and reinsurers, as well as any  
15           run-off entity established, in whole or in part,  
16           to review and pay asbestos claims.

17           (B) PROCEDURES FOR DETERMINING IN-  
18   SURER PAYMENTS.—

19           (i) AMOUNT OF PAYMENTS.—The  
20           Commission shall determine the amount  
21           that each insurer participant shall be re-  
22           quired to pay into the Fund under the pro-  
23           cedures described in this section. The  
24           Commission shall make the determination  
25           by first promulgating a rule establishing a

1 methodology for allocation of payments  
2 among insurer participants and then ap-  
3 plying such methodology to determine the  
4 individual payment for each insurer partic-  
5 ipant. The methodology shall be uniform  
6 for all insurer participants.

7 (ii) RESERVE STUDY REQUIRED.—The  
8 Commission shall conduct a reserve study  
9 (the “Reserve Study”) to determine the  
10 appropriate reserve allocation of each in-  
11 surer participant and may request infor-  
12 mation from each insurer participant, de-  
13 fendant participant, the Securities and Ex-  
14 change Commission or any State regu-  
15 latory agency for the purpose of con-  
16 ducting the Reserve Study. The Reserve  
17 Study shall calculate each insurer’s expo-  
18 sure to current and future asbestos claims  
19 in the asbestos litigation environment be-  
20 fore the date of enactment of this Act.  
21 Such calculation shall be derived from the  
22 following elements:

23 (I) An estimation of each defend-  
24 ant participant’s current and future  
25 exposure to expense and loss costs in

1 the asbestos litigation environment be-  
2 fore the date of enactment of this Act  
3 (“Ultimate Expense and Loss”).

4 (II) The application of a uniform  
5 set of assumptions regarding the ap-  
6 plication of insurance and reinsurance  
7 to Ultimate Expense and Loss and an  
8 analysis of each insurer participant’s  
9 unresolved or unexhausted insurance  
10 or reinsurance coverage applicable to  
11 such Ultimate Expense and Loss for  
12 each defendant participant;

13 (III) A projection of each insur-  
14 er’s exposure to claims by entities  
15 that had not yet become defendants  
16 as of the date of enactment of this  
17 Act, but might reasonably have been  
18 anticipated to become defendants in  
19 the future if the asbestos litigation en-  
20 vironment before the date of enact-  
21 ment of this Act had continued. Not  
22 later than 60 days after the initial  
23 meeting of the Commission, the Com-  
24 mission shall commence a rulemaking  
25 proceeding under section 213(a) to

1 propose and adopt a methodology for  
2 conducting the Reserve Study and al-  
3 locating payments among insurer par-  
4 ticipants on the basis of the Reserve  
5 Study. Such methodology shall be con-  
6 sistent with this subparagraph.

7 (iii) PERMITTED EXTRAPOLATION OF  
8 ULTIMATE EXPENSE AND LOSS FOR PE-  
9 RIPHERAL DEFENDANT PARTICIPANTS.—

10 The Commission may establish an appro-  
11 priate methodology to extrapolate Ultimate  
12 Expense and Loss for Tier VI defendant  
13 participants for the purposes of the Re-  
14 serve Study. Considerations for such meth-  
15 odology shall include the nature of that  
16 Tier VI defendant participant's asbestos li-  
17 ability, the number of pending and historic  
18 asbestos claims against the Tier VI defend-  
19 ant participant, and the jurisdictions in  
20 which such Tier VI defendant participant  
21 had been sued for asbestos liability.

22 (iv) RULE OF CONSTRUCTION.—Noth-  
23 ing in this subparagraph shall affect the  
24 initial payment requirement in section  
25 212(e)(1).

1 (C) SCOPE.—Every insurer, reinsurer, and  
2 runoff entity with asbestos-related obligations  
3 in the United States shall be subject to the  
4 Commission’s and Administrator’s authority  
5 under this Act, including allocation determina-  
6 tions, and shall be required to fulfill its pay-  
7 ment obligation without regard as to whether it  
8 is licensed in the United States. Every insurer  
9 participant not licensed or domiciled in the  
10 United States shall, upon the first payment to  
11 the Fund, submit a written consent to the Com-  
12 mission’s and Administrator’s authority under  
13 this Act, and to the jurisdiction of the courts of  
14 the United States for purposes of enforcing this  
15 Act, in a form determined by the Adminis-  
16 trator. Any insurer participant refusing to pro-  
17 vide a written consent shall be subject to fines  
18 and penalties as provided in section 223.

19 (D) ISSUERS OF FINITE RISK POLICIES.—

20 (i) IN GENERAL.—The issuer of any  
21 policy of retrospective reinsurance pur-  
22 chased by an insurer participant or its af-  
23 filiate after 1990 that provides for a risk  
24 or loss transfer to insure for asbestos  
25 losses and other losses (both known and

1 unknown), including those policies com-  
2 monly referred to as “finite risk”, “aggre-  
3 gate stop loss”, “aggregate excess of loss”,  
4 or “loss portfolio transfer” policies, shall  
5 be obligated to make payments required  
6 under this Act directly to the Fund on be-  
7 half of the insurer participant who is the  
8 beneficiary of such policy, subject to the  
9 underlying retention and the limits of li-  
10 ability applicable to such policy.

11 (ii) PAYMENTS.—Payments to the  
12 Fund required under this Act shall be  
13 treated as loss payments for asbestos bod-  
14 ily injury (as if such payments were in-  
15 curred as liabilities imposed in the tort  
16 system) and shall not be subject to exclu-  
17 sion under policies described under clause  
18 (i) as a liability with respect to tax or as-  
19 sessment. Within 90 days after the sched-  
20 uled date to make an annual payment to  
21 the Fund, the insurer participant shall, at  
22 its discretion, direct the reinsurer issuing  
23 such policy to pay all or a portion of the  
24 annual payment directly to the Fund up to  
25 the full applicable limits of liability under



1 the policy. The reinsurer issuing such pol-  
2 icy shall be obligated to make such pay-  
3 ments directly to the Fund and shall be  
4 subject to the enforcement provisions  
5 under section 223. The insurer participant  
6 shall remain obligated to make payment to  
7 the Fund of that portion of the annual  
8 payment not directed to the issuer of such  
9 reinsurance policy.

10 (2) AMOUNT OF PAYMENTS.—

11 (A) AGGREGATE PAYMENT OBLIGATION.—

12 The total payment required of all insurer par-  
13 ticipants over the life of the Fund shall be  
14 equal to \$46,025,000,000, less any bankruptcy  
15 trust credits under section 222(d).

16 (B) ACCOUNTING STANDARDS.—In deter-

17 mining the payment obligations of participants  
18 that are not licensed or domiciled in the United  
19 States or that are runoff entities, the Commis-  
20 sion shall use accounting standards required for  
21 United States licensed direct insurers.

22 (C) CAPTIVE INSURANCE COMPANIES.—No

23 payment to the Fund shall be required from a  
24 captive insurance company, unless and only to  
25 the extent a captive insurance company, on the

1 date of enactment of this Act, insures the as-  
2 bestos liability, directly or indirectly, of (and  
3 that arises out of the manufacture, sale, dis-  
4 tribution or installation of materials or products  
5 by, or other conduct of) a person or persons  
6 other than and unaffiliated with its ultimate  
7 parent or affiliated group or pool in which the  
8 ultimate parent participates or participated, or  
9 unaffiliated with a person that was its ultimate  
10 parent or a member of its affiliated group or  
11 pool at the time the relevant insurance or rein-  
12 surance was issued by the captive insurance  
13 company.

14 (D) SEVERAL LIABILITY.—Unless other-  
15 wise provided under this Act, each insurer par-  
16 ticipant's obligation to make payments to the  
17 Fund is several. Unless otherwise provided  
18 under this Act, there is no joint liability, and  
19 the future insolvency by any insurer participant  
20 shall not affect the payment required of any  
21 other insurer participant.

22 (3) PAYMENT OF CRITERIA.—

23 (A) INCLUSION IN INSURER PARTICIPANT  
24 CATEGORY.—

1 (i) IN GENERAL.—Insurers that have  
2 paid, or been assessed by a legal judgment  
3 or settlement, at least \$1,000,000 in de-  
4 fense and indemnity costs before the date  
5 of enactment of this Act in response to  
6 claims for compensation for asbestos inju-  
7 ries arising from a policy of liability insur-  
8 ance or contract of liability reinsurance or  
9 retrocessional reinsurance shall be insurer  
10 participants in the Fund. Other insurers  
11 shall be exempt from mandatory payments.

12 (ii) INAPPLICABILITY OF SECTION  
13 202.—Since insurers may be subject in cer-  
14 tain jurisdictions to direct action suits, and  
15 it is not the intent of this Act to impose  
16 upon an insurer, due to its operation as an  
17 insurer, payment obligations to the Fund  
18 in situations where the insurer is the sub-  
19 ject of a direct action, no insurer subject  
20 to mandatory payments under this section  
21 shall also be liable for payments to the  
22 Fund as a defendant participant under  
23 section 202.

24 (B) INSURER PARTICIPANT ALLOCATION  
25 METHODOLOGY.—

1 (i) IN GENERAL.—The Commission  
2 shall establish the payment obligations of  
3 individual insurer participants to reflect,  
4 on an equitable basis, the relative tort sys-  
5 tem liability of the participating insurers in  
6 the absence of this Act, considering and  
7 weighting, as appropriate (but exclusive of  
8 workers' compensation), such factors as—

9 (I) historic premium for lines of  
10 insurance associated with asbestos ex-  
11 posure over relevant periods of time;

12 (II) recent loss experience for as-  
13 bestos liability;

14 (III) amounts reserved for asbes-  
15 tos liability;

16 (IV) the likely cost to each in-  
17 surer participant of its future liabil-  
18 ities under applicable insurance poli-  
19 cies; and

20 (V) any other factor the Commis-  
21 sion may determine is relevant and  
22 appropriate.

23 (ii) DETERMINATION OF RESERVES.—  
24 The Commission may establish procedures  
25 and standards for determination of the as-

bestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, \$2,700,000,000 annually.

(ii) For years 3 through 5, \$5,075,000,000 annually.

(iii) For years 6 through 27, \$1,147,000,000 annually.

(iv) For year 28, \$166,000,000.

1 (D) CERTAIN RUNOFF ENTITIES.—A run-  
2 off entity shall include any direct insurer or re-  
3 insurer whose asbestos liability reserves have  
4 been transferred, directly or indirectly, to the  
5 runoff entity and on whose behalf the runoff  
6 entity handles or adjusts and, where appro-  
7 priate, pays asbestos claims.

8 (E) FINANCIAL HARDSHIP AND EXCEP-  
9 TIONAL CIRCUMSTANCE ADJUSTMENTS.—

10 (i) IN GENERAL.—Under the proce-  
11 dures established in subsection (b), an in-  
12 surer participant may seek adjustment of  
13 the amount of its payments based on ex-  
14 ceptional circumstances or severe financial  
15 hardship.

16 (ii) FINANCIAL ADJUSTMENTS.—An  
17 insurer participant may qualify for an ad-  
18 justment based on severe financial hard-  
19 ship by demonstrating that payment of the  
20 amounts required by the Commission's  
21 methodology would jeopardize the solvency  
22 of such participant.

23 (iii) EXCEPTIONAL CIRCUMSTANCE  
24 ADJUSTMENT.—An insurer participant  
25 may qualify for an adjustment based on

1 exceptional circumstances by dem-  
2 onstrating—

3 (I) that the amount of its pay-  
4 ments under the Commission's alloca-  
5 tion methodology is exceptionally in-  
6 equitable when measured against the  
7 amount of the likely cost to the par-  
8 ticipant of its future liability in the  
9 tort system in the absence of the  
10 Fund;

11 (II) an offset credit as described  
12 in subparagraphs (A) and (C) of sub-  
13 section (b)(4); or

14 (III) other exceptional cir-  
15 cumstances.

16 The Commission may determine whether  
17 to grant an adjustment and the size of any  
18 such adjustment, but except as provided  
19 under paragraph (1)(B), subsection (f)(3),  
20 and section 405(f), any such adjustment  
21 shall not affect the aggregate payment ob-  
22 ligations of insurer participants specified  
23 in paragraph (2)(A) and subparagraph (C)  
24 of this paragraph.

1 (iv) TIME PERIOD OF ADJUSTMENT.—

2 Except for adjustments for offset credits,  
3 adjustments granted under this subsection  
4 shall have a term not to exceed 3 years. An  
5 insurer participant may renew its adjust-  
6 ment by demonstrating to the Adminis-  
7 trator that it remains justified.

8 (F) FUNDING HOLIDAYS.—

9 (i) IN GENERAL.—If the Adminis-  
10 trator determines, at any time after 10  
11 years following the date of enactment of  
12 this Act, that the assets of the Fund at the  
13 time of such determination and expected  
14 future payments are sufficient to satisfy  
15 the Fund's anticipated obligations without  
16 the need for all, or any portion of, that  
17 year's payment otherwise required under  
18 this subtitle, the Administrator shall re-  
19 duce or waive all or any part of the pay-  
20 ments required from insurer participants  
21 for that year.

22 (ii) ANNUAL REVIEW.—The Adminis-  
23 trator shall undertake the review required  
24 by this subsection and make the necessary  
25 determination under clause (i) every year.



1 (iii) LIMITATIONS OF FUNDING HOLI-  
2 DAYS.—Any reduction or waiver of the in-  
3 surer participants' funding obligations  
4 shall—

5 (I) be made only to the extent  
6 the Administrator determines that the  
7 Fund will still be able to satisfy all of  
8 its anticipated obligations; and

9 (II) be applied on an equal pro  
10 rata basis to the funding obligations  
11 of all insurer participants for that  
12 year.

13 (iv) NEW INFORMATION.—If at any  
14 time the Administrator determines that a  
15 reduction or waiver under this section may  
16 cause the assets of the Fund and expected  
17 future payments to decrease to a level at  
18 which the Fund may not be able to satisfy  
19 all of its anticipated obligations, the Ad-  
20 ministrator shall revoke all or any part of  
21 such reduction or waiver to the extent nec-  
22 essary to ensure that the Fund's obliga-  
23 tions are met. Such revocations shall be  
24 applied on an equal pro rata basis to the

1 funding obligations of all insurer partici-  
2 pants for that year.

3 (b) PROCEDURE FOR NOTIFYING INSURER PARTICI-  
4 PANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

5 (1) NOTICE TO PARTICIPANTS.—Not later than  
6 30 days after promulgation of the final rule estab-  
7 lishing an allocation methodology under subsection  
8 (a)(1), the Commission shall—

9 (A) directly notify all reasonably identifi-  
10 able insurer participants of the requirement to  
11 submit information necessary to calculate the  
12 amount of any required payment to the Fund  
13 under the allocation methodology; and

14 (B) publish in the Federal Register a no-  
15 tice—

16 (i) requiring any person who may be  
17 an insurer participant (as determined by  
18 criteria outlined in the notice) to submit  
19 such information; and

20 (ii) that includes a list of all insurer  
21 participants notified by the Commission  
22 under subparagraph (A), and provides for  
23 30 days for the submission of comments or  
24 information regarding the completeness

1 and accuracy of the list of identified in-  
2 surer participants.

3 (2) RESPONSE REQUIRED BY INDIVIDUAL IN-  
4 SURER PARTICIPANTS.—

5 (A) IN GENERAL.—Any person who re-  
6 ceives notice under paragraph (1)(A), and any  
7 other person meeting the criteria specified in  
8 the notice published under paragraph (1)(B),  
9 shall respond by providing the Commission with  
10 all the information requested in the notice  
11 under a schedule or by a date established by  
12 the Commission.

13 (B) CERTIFICATION.—The response sub-  
14 mitted under subparagraph (A) shall be signed  
15 by a responsible corporate officer, general part-  
16 ner, proprietor, or individual of similar author-  
17 ity, who shall certify under penalty of law the  
18 completeness and accuracy of the information  
19 submitted.

20 (3) NOTICE TO INSURER PARTICIPANTS OF INI-  
21 TIAL PAYMENT DETERMINATION.—

22 (A) IN GENERAL.—

23 (i) NOTICE TO INSURERS.—Not later  
24 than 120 days after receipt of the informa-  
25 tion required by paragraph (2), the Com-

1 mission shall send each insurer participant  
2 a notice of initial determination requiring  
3 payments to the Fund, which shall be  
4 based on the information received from the  
5 participant in response to the Commis-  
6 sion's request for information. An insurer  
7 participant's payments shall be payable  
8 over the schedule established in subsection  
9 (a)(3)(C), in annual amounts proportionate  
10 to the aggregate annual amount of pay-  
11 ments for all insurer participants for the  
12 applicable year.

13 (ii) PUBLIC NOTICE.—Not later than  
14 7 days after sending the notification of ini-  
15 tial determination to insurer participants,  
16 the Commission shall publish in the Fed-  
17 eral Register a notice listing the insurer  
18 participants that have been sent such noti-  
19 fication, and the initial determination on  
20 the payment obligation of each identified  
21 participant.

22 (B) NO RESPONSE; INCOMPLETE RE-  
23 SPONSE.—If no response is received from an in-  
24 surer participant, or if the response is incom-  
25 plete, the initial determination requiring a pay-

1           ment from the insurer participant shall be  
2           based on the best information available to the  
3           Commission.

4           (4) COMMISSION REVIEW, REVISION, AND FI-  
5           NALIZATION OF INITIAL PAYMENT DETERMINA-  
6           TIONS.—

7                   (A) COMMENTS FROM INSURER PARTICI-  
8           PANTS.—Not later than 30 days after receiving  
9           a notice of initial determination from the Com-  
10          mission, an insurer participant may provide the  
11          Commission with additional information to sup-  
12          port adjustments to the required payments to  
13          reflect severe financial hardship or exceptional  
14          circumstances, including the provision of an off-  
15          set credit for an insurer participant for the  
16          amount of any asbestos-related payments it  
17          made or was legally obligated to make, includ-  
18          ing payments released from an escrow, as the  
19          result of a bankruptcy judicially confirmed after  
20          May 22, 2003, but before the date of enactment  
21          of this Act.

22                   (B) ADDITIONAL PARTICIPANTS.—If, be-  
23          fore the final determination of the Commission,  
24          the Commission receives information that an  
25          additional person may qualify as an insurer

1 participant, the Commission shall require such  
2 person to submit information necessary to de-  
3 termine whether payments from that person  
4 should be required, in accordance with the re-  
5 quirements of this subsection.

6 (C) REVISION PROCEDURES.—The Com-  
7 mission shall adopt procedures for revising ini-  
8 tial payments based on information received  
9 under subparagraphs (A) and (B), including a  
10 provision requiring an offset credit for an in-  
11 surer participant for the amount of any asbes-  
12 tos-related payments it made or was legally ob-  
13 ligated to make, including payments released  
14 from an escrow, as the result of a bankruptcy  
15 confirmed after May 22, 2003, but before the  
16 date of enactment of this Act.

17 (5) EXAMINATIONS AND SUBPOENAS.—

18 (A) EXAMINATIONS.—The Commission  
19 may conduct examinations of the books and  
20 records of insurer participants to determine the  
21 completeness and accuracy of information sub-  
22 mitted, or required to be submitted, to the  
23 Commission for purposes of determining partic-  
24 ipant payments.

1           (B) SUBPOENAS.—The Commission may  
2           request the Attorney General to subpoena per-  
3           sons to compel testimony, records, and other in-  
4           formation relevant to its responsibilities under  
5           this section. The Attorney General may enforce  
6           such subpoena in appropriate proceedings in  
7           the United States district court for the district  
8           in which the person to whom the subpoena was  
9           addressed resides, was served, or transacts  
10          business.

11          (6) ESCROW PAYMENTS.—Without regard to an  
12          insurer participant’s payment obligation under this  
13          section, any escrow or similar account established  
14          before the date of enactment of this Act by an in-  
15          surer participant in connection with an asbestos  
16          trust fund that has not been judicially confirmed by  
17          final order by the date of enactment of this Act shall  
18          be the property of the insurer participant and re-  
19          turned to that insurer participant.

20          (7) NOTICE TO INSURER PARTICIPANTS OF  
21          FINAL PAYMENT DETERMINATIONS.—Not later than  
22          60 days after the notice of initial determination is  
23          sent to the insurer participants, the Commission  
24          shall send each insurer participant a notice of final  
25          determination.

1       (c) INSURER PARTICIPANTS VOLUNTARY ALLOCA-  
2       TION AGREEMENT.—

3           (1) IN GENERAL.—Not later than 30 days after  
4       the Commission proposes its rule establishing an al-  
5       location methodology under subsection (a)(1), direct  
6       insurer participants licensed or domiciled in the  
7       United States, other direct insurer participants, re-  
8       insurer participants licensed or domiciled in the  
9       United States, or other reinsurer participants, may  
10      submit an allocation agreement, approved by all of  
11      the participants in the applicable group, to the Com-  
12      mission.

13          (2) ALLOCATION AGREEMENT.—To the extent  
14      the participants in any such applicable group volun-  
15      tarily agree upon an allocation arrangement, any  
16      such allocation agreement shall only govern the allo-  
17      cation of payments within that group and shall not  
18      determine the aggregate amount due from that  
19      group.

20          (3) CERTIFICATION.—The Commission shall de-  
21      termine whether an allocation agreement submitted  
22      under subparagraph (A) meets the requirements of  
23      this subtitle and, if so, shall certify the agreement  
24      as establishing the allocation methodology governing  
25      the individual payment obligations of the partici-



1        participants who are parties to the agreement. The author-  
 2        ity of the Commission under this subtitle shall, with  
 3        respect to participants who are parties to a certified  
 4        allocation agreement, terminate on the day after the  
 5        Commission certifies such agreement. Under sub-  
 6        section (f), the Administrator shall assume responsi-  
 7        bility, if necessary, for calculating the individual  
 8        payment obligations of participants who are parties  
 9        to the certified agreement.

10       (d) COMMISSION REPORT.—

11                (1) RECIPIENTS.—Until the work of the Com-  
 12       mission has been completed and the Commission ter-  
 13       minated, the Commission shall submit an annual re-  
 14       port, containing the information described under  
 15       paragraph (2), to—

16                        (A) the Committee on the Judiciary of the  
 17       Senate;

18                        (B) the Committee on the Judiciary of the  
 19       House of Representatives; and

20                        (C) the Administrator.

21                (2) CONTENTS.—The report under paragraph  
 22       (1) shall state the amount that each insurer partici-  
 23       pant is required to pay to the Fund, including the  
 24       payment schedule for such payments.

25       (e) INTERIM PAYMENTS.—

1           (1) AMOUNT OF INTERIM PAYMENT.—Within  
2           90 days after the date of enactment of this Act, in-  
3           surer participants shall make an aggregate payment  
4           to the Fund not to exceed 50 percent of the aggre-  
5           gate funding obligation specified under subsection  
6           (a)(3)(C) for year 1.

7           (2) RESERVE INFORMATION.—Within 30 days  
8           after the date of enactment of this Act, each insurer  
9           participant shall submit to the Administrator a cer-  
10          tified statement of its net held reserves for asbestos  
11          liabilities as of December 31, 2004.

12          (3) ALLOCATION OF INTERIM PAYMENT.—The  
13          Administrator shall allocate the interim payment  
14          among the individual insurer participants on an eq-  
15          uitable basis using the net held asbestos reserve in-  
16          formation provided by insurer participants under  
17          subsection (a)(3)(B). Within 60 days after the date  
18          of enactment of this Act, the Administrator shall  
19          publish in the Federal Register the name of each in-  
20          surer participant, and the amount of the insurer  
21          participant's allocated share of the interim payment.  
22          The use of net held asbestos reserves as the basis to  
23          determine an interim allocation shall not be binding  
24          on the Administrator in the determination of an ap-  
25          propriate final allocation methodology under this

1 section. All payments required under this paragraph  
2 shall be credited against the participant's ultimate  
3 payment obligation to the Fund established by the  
4 Commission. If an interim payment exceeds the ulti-  
5 mate payment, the Fund shall pay interest on the  
6 amount of the overpayment at a rate determined by  
7 the Administrator. If the ultimate payment exceeds  
8 the interim payment, the participant shall pay inter-  
9 est on the amount of the underpayment at the same  
10 rate. Any participant may seek an exemption from  
11 or reduction in any payment required under this  
12 subsection under the financial hardship and excep-  
13 tional circumstance standards established under sub-  
14 section (a)(3)(E).

15 (4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish  
16 an interim payment obligation shall be considered  
17 final agency action and reviewable under section  
18 303, except that the reviewing court may not stay an  
19 interim payment during the pendency of the appeal.

21 (f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—  
22

23 (1) IN GENERAL.—Upon termination of the  
24 Commission under section 215, the Administrator  
25 shall assume all the responsibilities and authority of

1 the Commission, except that the Administrator shall  
2 not have the power to modify the allocation method-  
3 ology established by the Commission or by certified  
4 agreement or to promulgate a rule establishing any  
5 such methodology.

6 (2) FINANCIAL HARDSHIP AND EXCEPTIONAL  
7 CIRCUMSTANCE ADJUSTMENTS.—Upon termination  
8 of the Commission under section 215, the Adminis-  
9 trator shall have the authority, upon application by  
10 any insurer participant, to make adjustments to an-  
11 nual payments upon the same grounds as provided  
12 in subsection (a)(3)(D). Adjustments granted under  
13 this subsection shall have a term not to exceed 3  
14 years. An insurer participant may renew its adjust-  
15 ment by demonstrating that it remains justified.  
16 Upon the grant of any adjustment, the Adminis-  
17 trator shall increase the payments, consistent with  
18 subsection (a)(1)(B), required of all other insurer  
19 participants so that there is no reduction in the ag-  
20 gregate payment required of all insurer participants  
21 for the applicable years. The increase in an insurer  
22 participant's required payment shall be in proportion  
23 to such participant's share of the aggregate payment  
24 obligation of all insurer participants.

1           (3) CREDITS FOR SHORTFALL ASSESSMENTS.—

2           If insurer participants are required during the first  
3           5 years of the life of the Fund to make up any  
4           shortfall in required insurer payments under sub-  
5           section (a)(1)(B), then, beginning in year 6, the Ad-  
6           ministrator shall grant each insurer participant a  
7           credit against its annual required payments during  
8           the applicable years that in the aggregate equal the  
9           amount of shortfall assessments paid by such in-  
10          surer participant during the first 5 years of the life  
11          of the Fund. The credit shall be prorated over the  
12          same number of years as the number of years during  
13          which the insurer participant paid a shortfall assess-  
14          ment. Insurer participants which did not pay all re-  
15          quired payments to the Fund during the first 5  
16          years of the life of the Fund shall not be eligible for  
17          a credit. The Administrator shall not grant a credit  
18          for shortfall assessments imposed under section  
19          405(f).

20          (4) FINANCIAL SECURITY REQUIREMENTS.—

21          Whenever an insurer participant's A.M. Best's  
22          claims payment rating or Standard and Poor's fi-  
23          nancial strength rating falls below A—, and until  
24          such time as either the insurer participant's A.M.  
25          Best's Rating or Standard and Poor's rating is

1 equal to or greater than A–, the Administrator  
2 shall have the authority to require that the partici-  
3 pating insurer either—

4 (A) pay the present value of its remaining  
5 Fund payments at a discount rate determined  
6 by the Administrator; or

7 (B) provide an evergreen letter of credit or  
8 financial guarantee for future payments issued  
9 by an institution with an A.M. Best's claims  
10 payment rating or Standard & Poor's financial  
11 strength rating of at least A+.

12 (g) ACCOUNTING TREATMENT.—Insurer partici-  
13 pants' payment obligations to the Fund shall be subject  
14 to discounting under the applicable accounting guidelines  
15 for generally accepted accounting purposes and statutory  
16 accounting purposes for each insurer participant. This  
17 subsection shall in no way reduce the amount of monetary  
18 payments to the Fund by insurer participants as required  
19 under subsection (a).

20 (h) JUDICIAL REVIEW.—The Commission's rule es-  
21 tablishing an allocation methodology, its final determina-  
22 tions of payment obligations and other final action shall  
23 be judicially reviewable as provided in title III.

1 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

2 (a) RULEMAKING.—The Commission shall promul-  
3 gate such rules and regulations as necessary to implement  
4 its authority under this Act, including regulations gov-  
5 erning an allocation methodology. Such rules and regula-  
6 tions shall be promulgated after providing interested par-  
7 ties with the opportunity for notice and comment.

8 (b) HEARINGS.—The Commission may hold such  
9 hearings, sit and act at such times and places, take such  
10 testimony, and receive such evidence as the Commission  
11 considers advisable to carry out this Act. The Commission  
12 shall also hold a hearing on any proposed regulation estab-  
13 lishing an allocation methodology, before the Commis-  
14 sion's adoption of a final regulation.

15 (c) INFORMATION FROM FEDERAL AND STATE  
16 AGENCIES.—The Commission may secure directly from  
17 any Federal or State department or agency such informa-  
18 tion as the Commission considers necessary to carry out  
19 this Act. Upon request of the Chairman of the Commis-  
20 sion, the head of such department or agency shall furnish  
21 such information to the Commission.

22 (d) POSTAL SERVICES.—The Commission may use  
23 the United States mails in the same manner and under  
24 the same conditions as other departments and agencies of  
25 the Federal Government.

1 (e) GIFTS.—The Commission may not accept, use, or  
2 dispose of gifts or donations of services or property.

3 (f) EXPERT ADVICE.—In carrying out its responsibil-  
4 ities, the Commission may enter into such contracts and  
5 agreements as the Commission determines necessary to  
6 obtain expert advice and analysis.

7 **SEC. 214. PERSONNEL MATTERS.**

8 (a) COMPENSATION OF MEMBERS.—Each member of  
9 the Commission shall be compensated at a rate equal to  
10 the daily equivalent of the annual rate of basic pay pre-  
11 scribed for level IV of the Executive Schedule under sec-  
12 tion 5315 of title 5, United States Code, for each day (in-  
13 cluding travel time) during which such member is engaged  
14 in the performance of the duties of the Commission.

15 (b) TRAVEL EXPENSES.—The members of the Com-  
16 mission shall be allowed travel expenses, including per  
17 diem in lieu of subsistence, at rates authorized for employ-  
18 ees of agencies under subchapter I of chapter 57 of title  
19 5, United States Code, while away from their homes or  
20 regular places of business in the performance of services  
21 for the Commission.

22 (c) STAFF.—

23 (1) IN GENERAL.—The Chairman of the Com-  
24 mission may, without regard to the civil service laws  
25 and regulations, appoint and terminate an executive



1 director and such other additional personnel as may  
2 be necessary to enable the Commission to perform  
3 its duties. The employment of an executive director  
4 shall be subject to confirmation by the Commission.

5 (2) COMPENSATION.—The Chairman of the  
6 Commission may fix the compensation of the execu-  
7 tive director and other personnel without regard to  
8 chapter 51 and subchapter III of chapter 53 of title  
9 5, United States Code, relating to classification of  
10 positions and General Schedule pay rates, except  
11 that the rate of pay for the executive director and  
12 other personnel may not exceed the rate payable for  
13 level V of the Executive Schedule under section 5316  
14 of such title.

15 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
16 Federal Government employee may be detailed to the  
17 Commission without reimbursement, and such detail shall  
18 be without interruption or loss of civil service status or  
19 privilege.

20 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-  
21 TENT SERVICES.—The Chairman of the Commission may  
22 procure temporary and intermittent services under section  
23 3109(b) of title 5, United States Code, at rates for individ-  
24 uals which do not exceed the daily equivalent of the annual

1 rate of basic pay prescribed for level V of the Executive  
 2 Schedule under section 5316 of such title.

3 **SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMIS-**  
 4 **SION.**

5 The Commission shall terminate 90 days after the  
 6 last date on which the Commission makes a final deter-  
 7 mination of contribution under section 212(b) or 90 days  
 8 after the last appeal of any final action by the Commission  
 9 is exhausted, whichever occurs later.

10 **SEC. 216. EXPENSES AND COSTS OF COMMISSION.**

11 All expenses of the Commission shall be paid from  
 12 the Fund.

13 **Subtitle C—Asbestos Injury Claims**  
 14 **Resolution Fund**

15 **SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS**  
 16 **RESOLUTION FUND.**

17 (a) ESTABLISHMENT.—There is established in the  
 18 Office of Asbestos Disease Compensation the Asbestos In-  
 19 jury Claims Resolution Fund, which shall be available to  
 20 pay—

21 (1) claims for awards for an eligible disease or  
 22 condition determined under title I;

23 (2) claims for reimbursement for medical moni-  
 24 toring determined under title I;

1           (3) principal and interest on borrowings under  
2       subsection (b);

3           (4) the remaining obligations to the asbestos  
4       trust of a debtor and the class action trust under  
5       section 405(g)(8); and

6           (5) administrative expenses to carry out the  
7       provisions of this Act.

8       (b) BORROWING AUTHORITY.—

9           (1) IN GENERAL.—The Administrator is au-  
10      thorized to borrow from time to time amounts as set  
11      forth in this subsection, for purposes of enhancing li-  
12      quidity available to the Fund for carrying out the  
13      obligations of the Fund under this Act. The Admin-  
14      istrator may authorize borrowing in such form, over  
15      such term, with such necessary disclosure to its  
16      lenders as will most efficiently enhance the Fund's  
17      liquidity.

18          (2) FEDERAL FINANCING BANK.—In addition to  
19      the general authority in paragraph (1), the Adminis-  
20      trator may borrow from the Federal Financing Bank  
21      in accordance with section 6 of the Federal Financ-  
22      ing Bank Act of 1973 (12 U.S.C. 2285), as needed  
23      for performance of the Administrator's duties under  
24      this Act for the first 5 years.

1           (3) BORROWING CAPACITY.—The maximum  
 2           amount that may be borrowed under this subsection  
 3           at any given time is the amount that, taking into ac-  
 4           count all payment obligations related to all previous  
 5           amounts borrowed in accordance with this sub-  
 6           section and all committed obligations of the Fund at  
 7           the time of borrowing, can be repaid in full (with in-  
 8           terest) in a timely fashion from—

9                   (A) the available assets of the Fund as of  
 10                  the time of borrowing; and

11                  (B) all amounts expected to be paid by  
 12                  participants during the subsequent 10 years.

13           (4) REPAYMENT OBLIGATIONS.—Repayment of  
 14           monies borrowed by the Administrator under this  
 15           subsection shall be repaid in full by the Fund con-  
 16           tributors and is limited solely to amounts available,  
 17           present or future, in the Fund.

18           (c) LOCKBOX FOR SEVERE ASBESTOS-RELATED IN-  
 19 JURY CLAIMANTS.—

20           (1) IN GENERAL.—Within the Fund, the Ad-  
 21           ministrator shall establish the following accounts:

22                   (A) A Mesothelioma Account, which shall  
 23                  be used solely to make payments to claimants  
 24                  eligible for an award under the criteria of Level  
 25                  IX.

1 (B) A Lung Cancer Account, which shall  
2 be used solely to make payments to claimants  
3 eligible for an award under the criteria of Level  
4 VIII.

5 (C) A Severe Asbestosis Account, which  
6 shall be used solely to make payments to claim-  
7 ants eligible for an award under the criteria of  
8 Level V.

9 (D) A Moderate Asbestosis Account, which  
10 shall be used solely to make payments to claim-  
11 ants eligible for an award under the criteria of  
12 Level IV.

13 (2) ALLOCATION.—The Administrator shall al-  
14 locate to each of the 4 accounts established under  
15 paragraph (1) a portion of payments made to the  
16 Fund adequate to compensate all anticipated claim-  
17 ants for each account. Within 60 days after the date  
18 of enactment of this Act, and periodically during the  
19 life of the Fund, the Administrator shall determine  
20 an appropriate amount to allocate to each account  
21 after consulting appropriate epidemiological and sta-  
22 tistical studies.

23 (d) AUDIT AUTHORITY.—

24 (1) IN GENERAL.—For the purpose of  
25 ascertaining the correctness of any information pro-

1 vided or payments made to the Fund, or deter-  
2 mining whether a person who has not made a pay-  
3 ment to the Fund was required to do so, or deter-  
4 mining the liability of any person for a payment to  
5 the Fund, or collecting any such liability, or inquir-  
6 ing into any offense connected with the administra-  
7 tion or enforcement of this title, the Administrator  
8 is authorized—

9 (A) to examine any books, papers, records,  
10 or other data which may be relevant or material  
11 to such inquiry;

12 (B) to summon the person liable for a pay-  
13 ment under this title, or officer or employee of  
14 such person, or any person having possession,  
15 custody, or care of books of account containing  
16 entries relating to the business of the person  
17 liable or any other person the Administrator  
18 may deem proper, to appear before the Admin-  
19 istrator at a time and place named in the sum-  
20 mons and to produce such books, papers,  
21 records, or other data, and to give such testi-  
22 mony, under oath, as may be relevant or mate-  
23 rial to such inquiry; and

1 (C) to take such testimony of the person  
2 concerned, under oath, as may be relevant or  
3 material to such inquiry.

4 (2) FALSE, FRAUDULENT, OR FICTITIOUS  
5 STATEMENTS OR PRACTICES.—If the Administrator  
6 determines that materially false, fraudulent, or ficti-  
7 tious statements or practices have been submitted or  
8 engaged in by persons submitting information to the  
9 Administrator or to the Asbestos Insurers Commis-  
10 sion or any other person who provides evidence in  
11 support of such submissions for purposes of deter-  
12 mining payment obligations under this Act, the Ad-  
13 ministrator may impose a civil penalty not to exceed  
14 \$10,000 on any person found to have submitted or  
15 engaged in a materially false, fraudulent, or ficti-  
16 tious statement or practice under this Act. The Ad-  
17 ministrator shall promulgate appropriate regulations  
18 to implement this paragraph.

19 (e) IDENTITY OF CERTAIN DEFENDANT PARTICI-  
20 PANTS; TRANSPARENCY.—

21 (1) SUBMISSION OF INFORMATION.—Not later  
22 than 60 days after the date of enactment of this  
23 Act, any person who, acting in good faith, has  
24 knowledge that such person or such person's affili-  
25 ated group has prior asbestos expenditures of

1       \$1,000,000 or greater, shall submit to the Adminis-  
2       trator—

3               (A) either the name of such person, or  
4               such person's ultimate parent; and

5               (B) the likely tier to which such person or  
6               affiliated group may be assigned under this Act.

7       (2) PUBLICATION.—Not later than 20 days  
8       after the end of the 60-day period referred to in  
9       paragraph (1), the Administrator or Interim Admin-  
10      istrator, if the Administrator is not yet appointed,  
11      shall publish in the Federal Register a list of sub-  
12      missions required by this subsection, including the  
13      name of such persons or ultimate parents and the  
14      likely tier to which such persons or affiliated groups  
15      may be assigned. After publication of such list, any  
16      person who, acting in good faith, has knowledge that  
17      any other person has prior asbestos expenditures of  
18      \$1,000,000 or greater may submit to the Adminis-  
19      trator or Interim Administrator information on the  
20      identity of that person and the person's prior asbes-  
21      tos expenditures.

22      (f) NO PRIVATE RIGHT OF ACTION.—Except as pro-  
23      vided in sections 203(b)(2)(D)(ii) and 204(f)(3), there  
24      shall be no private right of action under any Federal or  
25      State law against any participant based on a claim of com-



1 pliance or noncompliance with this Act or the involvement  
2 of any participant in the enactment of this Act.

3 **SEC. 222. MANAGEMENT OF THE FUND.**

4 (a) IN GENERAL.—Amounts in the Fund shall be  
5 held for the exclusive purpose of providing benefits to as-  
6 bestos claimants and their beneficiaries and to otherwise  
7 defray the reasonable expenses of administering the Fund.

8 (b) INVESTMENTS.—

9 (1) IN GENERAL.—Amounts in the Fund shall  
10 be administered and invested with the care, skill,  
11 prudence, and diligence, under the circumstances  
12 prevailing at the time of such investment, that a  
13 prudent person acting in a like capacity and manner  
14 would use.

15 (2) STRATEGY.—The Administrator shall invest  
16 amounts in the Fund in a manner that enables the  
17 Fund to make current and future distributions to or  
18 for the benefit of asbestos claimants. In pursuing an  
19 investment strategy under this subparagraph, the  
20 Administrator shall consider, to the extent relevant  
21 to an investment decision or action—

22 (A) the size of the Fund;

23 (B) the nature and estimated duration of  
24 the Fund;

1 (C) the liquidity and distribution require-  
2 ments of the Fund;

3 (D) general economic conditions at the  
4 time of the investment;

5 (E) the possible effect of inflation or defla-  
6 tion on Fund assets;

7 (F) the role that each investment or course  
8 of action plays with respect to the overall assets  
9 of the Fund;

10 (G) the expected amount to be earned (in-  
11 cluding both income and appreciation of cap-  
12 ital) through investment of amounts in the  
13 Fund; and

14 (H) the needs of asbestos claimants for  
15 current and future distributions authorized  
16 under this Act.

17 (c) BANKRUPTCY TRUST GUARANTEE.—

18 (1) IN GENERAL.—Notwithstanding any other  
19 provision of this Act, the Administrator shall have  
20 the authority to impose a pro rata surcharge on all  
21 participants under this subsection to ensure the li-  
22 quidity of the Fund, if—

23 (A) the declared assets from 1 or more  
24 bankruptcy trusts established under a plan of  
25 reorganization confirmed and substantially con-

1           summed on or before July 31, 2004, are not  
2           available to the Fund because a final judgment  
3           that has been entered by a court and is no  
4           longer subject to any appeal or review has en-  
5           joined the transfer of assets required under sec-  
6           tion 524(j)(2) of title 11, United States Code  
7           (as amended by section 402(f) of this Act); and

8           (B) borrowing is insufficient to assure the  
9           Fund's ability to meet its obligations under this  
10          Act such that the required borrowed amount is  
11          likely to increase the risk of termination of this  
12          Act under section 405 based on reasonable  
13          claims projections.

14          (2) ALLOCATION.—Any surcharge imposed  
15          under this subsection shall be imposed over a period  
16          of 5 years on a pro rata basis upon all participants,  
17          in accordance with the relative aggregate funding  
18          obligations under sections 202(a)(2) and  
19          212(a)(2)(A).

20          (3) CERTIFICATION.—

21                (A) IN GENERAL.—Before imposing a sur-  
22                charge under this subsection, the Administrator  
23                shall publish a notice in the Federal Register  
24                and provide in such notice for a public comment  
25                period of 30 days.

1 (B) CONTENTS OF NOTICE.—The notice  
2 required under subparagraph (A) shall in-  
3 clude—

4 (i) information explaining the cir-  
5 cumstances that make a surcharge nec-  
6 essary and a certification that the require-  
7 ments under paragraph (1) are met;

8 (ii) the amount of the declared assets  
9 from any trust established under a plan of  
10 reorganization confirmed and substantially  
11 consummated on or before July 31, 2004,  
12 that was not made, or is no longer, avail-  
13 able to the Fund;

14 (iii) the total aggregate amount of the  
15 necessary surcharge; and

16 (iv) the surcharge amount for each  
17 tier and subtier of defendant participants  
18 and for each insurer participant.

19 (C) FINAL NOTICE.—The Administrator  
20 shall publish a final notice in the Federal Reg-  
21 ister and provide each participant with written  
22 notice of that participant's schedule of pay-  
23 ments under this subsection. In no event shall  
24 any required surcharge under this subsection be  
25 due before 60 days after the Administrator

1 publishes the final notice in the Federal Reg-  
2 ister and provides each participant with written  
3 notice of its schedule of payments.

4 (4) MAXIMUM AMOUNT.—In no event shall the  
5 total aggregate surcharge imposed by the Adminis-  
6 trator exceed the lesser of—

7 (A) the total aggregate amount of the de-  
8 clared assets of the trusts established under a  
9 plan of reorganization confirmed and substan-  
10 tially consummated prior to July 31, 2004, that  
11 are no longer available to the Fund; or

12 (B) \$4,000,000,000.

13 (5) DECLARED ASSETS.—

14 (A) IN GENERAL.—In this subsection, the  
15 term “declared assets” means—

16 (i) the amount of assets transferred  
17 by any trust established under a plan of  
18 reorganization confirmed and substantially  
19 consummated on or before July 31, 2004,  
20 to the Fund that is required to be returned  
21 to that trust under the final judgment de-  
22 scribed in paragraph (1)(A); or

23 (ii) if no assets were transferred by  
24 the trust to the Fund, the amount of as-  
25 sets the Administrator determines would

1           have been available for transfer to the  
2           Fund from that trust under section 402(f).

3           (B) DETERMINATION.—In making a deter-  
4           mination under subparagraph (A)(ii), the Ad-  
5           ministrator may rely on any information rea-  
6           sonably available, and may request, and use  
7           subpoena authority of the Administrator if nec-  
8           essary to obtain, relevant information from any  
9           such trust or its trustees.

10       (d) BANKRUPTCY TRUST CREDITS.—

11           (1) IN GENERAL.—Notwithstanding any other  
12           provision of this Act, but subject to paragraph (2)  
13           of this subsection, the Administrator shall provide a  
14           credit toward the aggregate payment obligations  
15           under sections 202(a)(2) and 212(a)(2)(A) for as-  
16           sets received by the Fund from any bankruptcy trust  
17           established under a plan of reorganization confirmed  
18           and substantially consummated after July 31, 2004.

19           (2) ALLOCATION OF CREDITS.—The Adminis-  
20           trator shall allocate, for each such bankruptcy trust,  
21           the credits for such assets between the defendant  
22           and insurer aggregate payment obligations as fol-  
23           lows:

24           (A) DEFENDANT PARTICIPANTS.—The ag-  
25           gregate amount that all persons other than in-

1           surers contributing to the bankruptcy trust  
2           would have been required to pay as Tier I de-  
3           fendants under section 203(b) if the plan of re-  
4           organization under which the bankruptcy trust  
5           was established had not been confirmed and  
6           substantially consummated and the proceeding  
7           under chapter 11 of title 11, United States  
8           Code, that resulted in the establishment of the  
9           bankruptcy trust had remained pending as of  
10          the date of enactment of this Act.

11                   (B) INSURER PARTICIPANTS.—The aggre-  
12           gate amount of all credits to which insurers are  
13           entitled to under section 202(c)(4)(A) of the  
14           Act.

15 **SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.**

16           (a) DEFAULT.—If any participant fails to make any  
17           payment in the amount of and according to the schedule  
18           under this Act or as prescribed by the Administrator, after  
19           demand and a 30-day opportunity to cure the default,  
20           there shall be a lien in favor of the United States for the  
21           amount of the delinquent payment (including interest)  
22           upon all property and rights to property, whether real or  
23           personal, belonging to such participant.

24           (b) BANKRUPTCY.—In the case of a bankruptcy or  
25           insolvency proceeding, the lien imposed under subsection

1 (a) shall be treated in the same manner as a lien for taxes  
2 due and owing to the United States for purposes of the  
3 provisions of title 11, United States Code, or section  
4 3713(a) of title 31, United States Code. The United  
5 States Bankruptcy Court shall have jurisdiction over any  
6 issue or controversy regarding lien priority and lien perfec-  
7 tion arising in a bankruptcy case due to a lien imposed  
8 under subsection (a).

9 (c) CIVIL ACTION.—

10 (1) IN GENERAL.—In any case in which there  
11 has been a refusal or failure to pay any liability im-  
12 posed under this Act, including a refusal or failure  
13 to provide the information required under section  
14 204 needed to determine liability, the Administrator  
15 may bring a civil action in any appropriate United  
16 States District Court, or any other appropriate law-  
17 suit or proceeding outside of the United States—

18 (A) to enforce the liability and any lien of  
19 the United States imposed under this section;

20 (B) to subject any property of the partici-  
21 pant, including any property in which the par-  
22 ticipant has any right, title, or interest to the  
23 payment of such liability;

24 (C) for temporary, preliminary, or perma-  
25 nent relief; or



1 (D) to enforce a subpoena issued under  
2 section 204(i)(9) to compel the production of  
3 documents necessary to determine liability.

4 (2) ADDITIONAL PENALTIES.—In any action  
5 under paragraph (1) in which the refusal or failure  
6 to pay was willful, the Administrator may seek re-  
7 covery—

8 (A) of punitive damages;

9 (B) of the costs of any civil action under  
10 this subsection, including reasonable fees in-  
11 curred for collection, expert witnesses, and at-  
12 torney's fees; and

13 (C) in addition to any other penalty, of a  
14 fine equal to the total amount of the liability  
15 that has not been collected.

16 (d) ENFORCEMENT AUTHORITY AS TO INSURER PAR-  
17 TICIPANTS.—

18 (1) IN GENERAL.—In addition to or in lieu of  
19 the enforcement remedies described in subsection  
20 (c), the Administrator may seek to recover amounts  
21 in satisfaction of a payment not timely paid by an  
22 insurer participant under the procedures under this  
23 subsection.

24 (2) SUBROGATION.—To the extent required to  
25 establish personal jurisdiction over nonpaying in-

1 surer participants, the Administrator shall be  
 2 deemed to be subrogated to the contractual rights of  
 3 participants to seek recovery from nonpaying insur-  
 4 ing participants that are domiciled outside the  
 5 United States under the policies of liability insur-  
 6 ance or contracts of liability reinsurance or  
 7 retrocessional reinsurance applicable to asbestos  
 8 claims, and the Administrator may bring an action  
 9 or an arbitration against the nonpaying insurer par-  
 10 ticipants under the provisions of such policies and  
 11 contracts, provided that—

12 (A) any amounts collected under this sub-  
 13 section shall not increase the amount of deemed  
 14 erosion allocated to any policy or contract under  
 15 section 404, or otherwise reduce coverage avail-  
 16 able to a participant; and

17 (B) subrogation under this subsection shall  
 18 have no effect on the validity of the insurance  
 19 policies or reinsurance, and any contrary State  
 20 law is expressly preempted.

21 (3) RECOVERABILITY OF CONTRIBUTION.—For  
 22 purposes of this subsection—

23 (A) all contributions to the Fund required  
 24 of a participant shall be deemed to be sums le-

1 gally required to be paid for bodily injury re-  
2 sulting from exposure to asbestos;

3 (B) all contributions to the Fund required  
4 of any participant shall be deemed to be a sin-  
5 gle loss arising from a single occurrence under  
6 each contract to which the Administrator is  
7 subrogated; and

8 (C) with respect to reinsurance contracts,  
9 all contributions to the Fund required of a par-  
10 ticipant shall be deemed to be payments to a  
11 single claimant for a single loss.

12 (4) NO CREDIT OR OFFSET.—In any action  
13 brought under this subsection, the nonpaying insurer  
14 or reinsurer shall be entitled to no credit or offset  
15 for amounts collectible or potentially collectible from  
16 any participant nor shall such defaulting participant  
17 have any right to collect any sums payable under  
18 this section from any participant.

19 (5) COOPERATION.—Insureds and cedents shall  
20 cooperate with the Administrator's reasonable re-  
21 quests for assistance in any such proceeding. The  
22 positions taken or statements made by the Adminis-  
23 trator in any such proceeding shall not be binding  
24 on or attributed to the insureds or cedents in any  
25 other proceeding. The outcome of such a proceeding

1       shall not have a preclusive effect on the insureds or  
2       cedents in any other proceeding and shall not be ad-  
3       missible against any subrogee under this section.

4       The Administrator shall have the authority to settle  
5       or compromise any claims against a nonpaying in-  
6       surer participant under this subsection.

7       (e) BAR ON UNITED STATES BUSINESS.—If any di-  
8       rect insurer or reinsurer refuses to pay any contribution  
9       required by this Act, then, in addition to any other pen-  
10      alties imposed by this Act, the Administrator shall issue  
11      an order barring such entity and its affiliates from insur-  
12      ing risks located within the United States or otherwise  
13      doing business within the United States unless and until  
14      it complies. If any direct insurer or reinsurer refuses to  
15      furnish any information requested by the Administrator,  
16      the Administrator may issue an order barring such entity  
17      and its affiliates from insuring risks located within the  
18      United States or otherwise doing business within the  
19      United States unless and until it complies. Insurer partici-  
20      pants or their affiliates seeking to obtain a license from  
21      any State to write any type of insurance shall be barred  
22      from obtaining any such license until payment of all con-  
23      tributions required as of the date of license application.

24      (f) CREDIT FOR REINSURANCE.—If the Adminis-  
25      trator determines that an insurer participant that is a re-

1 insurer is in default in paying any required contribution  
 2 or otherwise not in compliance with this Act, the Adminis-  
 3 trator may issue an order barring any direct insurer par-  
 4 ticipant from receiving credit for reinsurance purchased  
 5 from the defaulting reinsurer after the date of the Admin-  
 6 istrator's determination of default. Any State law gov-  
 7 erning credit for reinsurance to the contrary is preempted.

8 (g) DEFENSE LIMITATION.—In any proceeding under  
 9 this section, the participant shall be barred from bringing  
 10 any challenge to any determination of the Administrator  
 11 or the Asbestos Insurers Commission regarding its liability  
 12 under this Act, or to the constitutionality of this Act or  
 13 any provision thereof, if such challenge could have been  
 14 made during the review provided under section 204(i)(10),  
 15 or in a judicial review proceeding under section 303.

16 (h) DEPOSIT OF FUNDS.—

17 (1) IN GENERAL.—Any funds collected under  
 18 subsection (c)(2) (A) or (C) shall be—

19 (A) deposited in the Fund; and

20 (B) used only to pay—

21 (i) claims for awards for an eligible  
 22 disease or condition determined under title  
 23 I; or

24 (ii) claims for reimbursement for med-  
 25 ical monitoring determined under title I.

1           (2) NO EFFECT ON OTHER LIABILITIES.—The  
2           imposition of a fine under subsection (c)(2)(C) shall  
3           have no effect on—

4                   (A) the assessment of contributions under  
5                   subtitles A and B; or

6                   (B) any other provision of this Act.

7           (i) PROPERTY OF THE ESTATE.—Section 541(b) of  
8           title 11, United States Code, is amended—

9                   (1) in paragraph (4)(B)(ii), by striking “or” at  
10           the end;

11                  (2) in paragraph (5), by striking “prohibition.”  
12           and inserting “prohibition; or”; and

13                  (3) by inserting after paragraph (5) and before  
14           the last undesignated sentence the following:

15                  “(6) the value of any pending claim against or  
16           the amount of an award granted from the Asbestos  
17           Injury Claims Resolution Fund established under  
18           the Fairness in Asbestos Injury Resolution Act of  
19           2006.”.

20           (j) TRANSACTIONS.—

21                  (1) NOTICE OF TRANSACTION.—Any participant  
22           that has engaged in any transaction or series of  
23           transactions under which a significant portion of  
24           such participant’s assets, properties, or business  
25           was, directly or indirectly, transferred by any means

1 (including by sale, dividend, contribution to a sub-  
2 sidiary or split-off) to 1 or more persons other than  
3 the participant shall provide written notice to the  
4 Administrator of such transaction (or series of  
5 transactions).

6 (2) TIMING OF NOTICE AND RELATED AC-  
7 TIONS.—

8 (A) IN GENERAL.—Any notice that a par-  
9 ticipant is required to give under paragraph (1)  
10 shall be given not later than 30 days after the  
11 date of consummation of the transaction or the  
12 first transaction to occur in a proposed series of  
13 transactions.

14 (B) OTHER NOTIFICATIONS.—

15 (i) IN GENERAL.—Not later than the  
16 date in any year by which a participant is  
17 required to make its contribution to the  
18 Fund, the participant shall deliver to the  
19 Administrator a written certification stat-  
20 ing that—

21 (I) the participant has complied  
22 during the period since the last such  
23 certification or the date of enactment  
24 of this Act with the notice require-  
25 ments under this subsection; or

1 (II) the participant was not re-  
2 quired to provide any notice under  
3 this subsection during such period.

4 (ii) SUMMARY.—The Administrator  
5 shall include in the annual report required  
6 to be submitted to Congress under section  
7 405 a summary of all such notices (after  
8 removing all confidential identifying infor-  
9 mation) received during the most recent  
10 fiscal year.

11 (C) NOTICE COMPLETION.—The Adminis-  
12 trator shall not consider any notice given under  
13 paragraph (1) as given until such time as the  
14 Administrator receives substantially all the in-  
15 formation required by this subsection.

16 (3) CONTENTS OF NOTICE.—

17 (A) IN GENERAL.—The Administrator  
18 shall determine by rule or regulation the infor-  
19 mation to be included in the notice required  
20 under this subsection, which shall include such  
21 information as may be necessary to enable the  
22 Administrator to determine whether—

23 (i) the person or persons to whom the  
24 assets, properties, or business were trans-  
25 ferred in the transaction (or series of



1 transactions) should be considered to be  
2 the successor in interest of the participant  
3 for purposes of this Act; or

4 (ii) the transaction (or series of trans-  
5 actions) is subject to avoidance by a trust-  
6 ee under section 544(b) or 548 of title 11,  
7 United States Code, as if, but whether or  
8 not, the participant is subject to a case  
9 under title 11, United States Code.

10 (B) STATEMENTS.—The notice shall also  
11 include—

12 (i) a statement by the participant as  
13 to whether the participant believes any  
14 person has become a successor in interest  
15 to the participant for purposes of this Act  
16 and, if so, the identity of that person; and

17 (ii) a statement by the participant as  
18 to whether that person has acknowledged  
19 that it has become a successor in interest  
20 for purposes of this Act.

21 (4) DEFINITION.—In this subsection, the term  
22 “significant portion of the assets, properties, or busi-  
23 ness of a participant” means assets (including tan-  
24 gible or intangible assets, securities, and cash),  
25 properties or business of such participant (or its af-

1        affiliated group, to the extent that the participant has  
 2        elected to be part of an affiliated group under sec-  
 3        tion 204(f)) that, together with any other asset,  
 4        property, or business transferred by such participant  
 5        in any of the previous completed 5 fiscal years of  
 6        such participant (or, as appropriate, its affiliated  
 7        group), and as determined in accordance with  
 8        United States generally accepted accounting prin-  
 9        ciples as in effect from time to time—

10            (A) generated at least 40 percent of the  
 11            revenues of such participant (or its affiliated  
 12            group);

13            (B) constituted at least 40 percent of the  
 14            assets of such participant (or its affiliated  
 15            group);

16            (C) generated at least 40 percent of the  
 17            operating cash flows of such participant (or its  
 18            affiliated group); or

19            (D) generated at least 40 percent of the  
 20            net income or loss of such participant (or its af-  
 21            filiated group),

22        as measured during any of such 5 previous fiscal  
 23        years.

24            (5) RIGHT OF ACTION.—

1 (A) IN GENERAL.—Notwithstanding sec-  
2 tion 221(f), if the Administrator or any partici-  
3 pant believes that a participant has engaged, di-  
4 rectly or indirectly, in, or is the subject of, a  
5 transaction (or series of transactions)—

6 (i) involving a person or persons who,  
7 as a result of such transaction (or series of  
8 transactions), may have or may become the  
9 successor in interest or successors in inter-  
10 est of such participant, where the status as  
11 a successor in interest has not been stated  
12 and acknowledged by the participant and  
13 such person; or

14 (ii) that may be subject to avoidance  
15 by a trustee under section 544(b) or 548  
16 of title 11, United States Code, as if, but  
17 whether or not, the participant is a subject  
18 to a case under title 11, United States  
19 Code,

20 then the Administrator or such participant  
21 may, as a deemed creditor under applicable law,  
22 bring a civil action in an appropriate forum  
23 against the participant or any other person who  
24 is either a party to the transaction (or series of

1 transactions) or the recipient of any asset,  
2 property, or business of the participant.

3 (B) RELIEF ALLOWED.—In any action  
4 commenced under this subsection, the Adminis-  
5 trator or a participant, as applicable, may  
6 seek—

7 (i) with respect to a transaction (or  
8 series of transactions) referenced in clause  
9 (i) of subparagraph (A), a declaratory  
10 judgment regarding whether such person  
11 has become the successor in interest of  
12 such participant; or

13 (ii) with respect to a transaction (or  
14 series of transactions) referenced in clause  
15 (ii) of subparagraph (A) a temporary re-  
16 straining order or a preliminary or perma-  
17 nent injunction such other relief regarding  
18 such transaction (or series of transactions)  
19 as the court determines to be necessary to  
20 ensure that performance of a participant's  
21 payment obligations under this Act is not  
22 materially impaired by reason of such  
23 transaction (or series of transactions).

24 (C) APPLICABILITY.—If the Administrator  
25 or a participant wishes to challenge a statement

1           made by a participant that a person has not be-  
2           come a successor in interest for purposes of this  
3           Act, then this paragraph shall be the exclusive  
4           means by which the determination of whether  
5           such person became a successor in interest of  
6           the participant shall be made. This paragraph  
7           shall not preempt any other rights of any per-  
8           son under applicable Federal or State law.

9           (D) VENUE.—Any action under this para-  
10          graph shall be exclusively brought in any appro-  
11          priate United States district court or, to the ex-  
12          tent necessary to obtain complete relief, any  
13          other appropriate forum outside of the United  
14          States.

15          (6) RULES AND REGULATIONS.—The Adminis-  
16          trator may promulgate regulations to effectuate the  
17          intent of this subsection, including regulations relat-  
18          ing to the form, timing, and content of notices.

19   **SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.**

20          If any amount of payment obligation under this title  
21          is not paid on or before the last date prescribed for pay-  
22          ment, the liable party shall pay interest on such amount  
23          at the Federal short-term rate determined under section  
24          6621(b) of the Internal Revenue Code of 1986, plus 5 per-

1 centage points, for the period from such last date to the  
2 date paid.

3 **SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND**  
4 **MONITORING.**

5 (a) IN GENERAL.—The Administrator shall establish  
6 a program for the education, consultation, medical screen-  
7 ing, and medical monitoring of persons with exposure to  
8 asbestos. The program shall be funded by the Fund.

9 (b) OUTREACH AND EDUCATION.—

10 (1) IN GENERAL.—Not later than 1 year after  
11 the date of enactment of this Act, the Administrator  
12 shall establish an outreach and education program,  
13 including a website designed to provide information  
14 about asbestos-related medical conditions to mem-  
15 bers of populations at risk of developing such condi-  
16 tions.

17 (2) INFORMATION.—The information provided  
18 under paragraph (1) shall include information  
19 about—

20 (A) the signs and symptoms of asbestos-re-  
21 lated medical conditions;

22 (B) the value of appropriate medical  
23 screening programs; and

1 (C) actions that the individuals can take to  
2 reduce their future health risks related to as-  
3 bestos exposure.

4 (3) CONTRACTS.—Preference in any contract  
5 under this subsection shall be given to providers that  
6 are existing nonprofit organizations with a history  
7 and experience of providing occupational health out-  
8 reach and educational programs for individuals ex-  
9 posed to asbestos.

10 (c) MEDICAL SCREENING PROGRAM.—

11 (1) ESTABLISHMENT OF PROGRAM.—Not soon-  
12 er than 18 months or later than 24 months after the  
13 Administrator certifies that the Fund is fully oper-  
14 ational and processing claims at a reasonable rate,  
15 the Administrator shall adopt guidelines establishing  
16 a medical screening program for individuals at high  
17 risk of asbestos-related disease resulting from an as-  
18 bestos-related disease. In promulgating such guide-  
19 lines, the Administrator shall consider the views of  
20 the Advisory Committee on Asbestos Disease Com-  
21 pensation, the Medical Advisory Committee, and the  
22 public.

23 (2) ELIGIBILITY CRITERIA.—

24 (A) IN GENERAL.—The guidelines promul-  
25 gated under this subsection shall establish cri-

1           teria for participation in the medical screening  
2           program.

3           (B) CONSIDERATIONS.—In promulgating  
4           eligibility criteria the Administrator shall take  
5           into consideration all factors relevant to the in-  
6           dividual's effective cumulative exposure to as-  
7           bestos, including—

8                   (i) any industry in which the indi-  
9                   vidual worked;

10                  (ii) the individual's occupation and  
11                  work setting;

12                  (iii) the historical period in which ex-  
13                  posure took place;

14                  (iv) the duration of the exposure;

15                  (v) the intensity and duration of non-  
16                  occupational exposures;

17                  (vi) the intensity and duration of ex-  
18                  posure to risk levels of naturally occurring  
19                  asbestos as defined by the Environmental  
20                  Protection Agency; and

21                  (vii) any other factors that the Ad-  
22                  ministrator determines relevant.

23           (3) PROTOCOLS.—The guidelines developed  
24           under this subsection shall establish protocols for  
25           medical screening, which shall include—



1 (A) administration of a health evaluation  
2 and work history questionnaire;

3 (B) an evaluation of smoking history;

4 (C) a physical examination by a qualified  
5 physician with a doctor-patient relationship  
6 with the individual;

7 (D) a chest x-ray read by a certified B-  
8 reader as defined under section 121(a)(4); and

9 (E) pulmonary function testing as defined  
10 under section 121(a)(13).

11 (4) FREQUENCY.—The Administrator shall es-  
12 tablish the frequency with which medical screening  
13 shall be provided or be made available to eligible in-  
14 dividuals, which shall be not less than every 5 years.

15 (5) PROVISION OF SERVICES.—The Adminis-  
16 trator shall provide medical screening to eligible in-  
17 dividuals directly or by contract with another agency  
18 of the Federal Government, with State or local gov-  
19 ernments, or with private providers of medical serv-  
20 ices. The Administrator shall establish strict quali-  
21 fications for the providers of such services, and shall  
22 periodically audit the providers of services under this  
23 subsection, to ensure their integrity, high degree of  
24 competence, and compliance with all applicable tech-  
25 nical and professional standards. No provider of

1        medical screening services may have earned more  
2        than 15 percent of their income from the provision  
3        of services of any kind in connection with asbestos  
4        litigation in any of the 3 years preceding the date  
5        of enactment of this Act. All contracts with pro-  
6        viders of medical screening services under this sub-  
7        section shall contain provisions for reimbursement of  
8        screening services at a reasonable rate and termi-  
9        nation of such contracts for cause if the Adminis-  
10       trator determines that the service provider fails to  
11       meet the qualifications established under this sub-  
12       section.

13            (6) LIMITATION OF COMPENSATION FOR SERV-  
14       ICES.—The compensation required to be paid to a  
15       provider of medical screening services for such serv-  
16       ices furnished to an eligible individual shall be lim-  
17       ited to the amount that would be reimbursed at the  
18       time of the furnishing of such services under title  
19       XVIII of the Social Security Act (42 U.S.C. 1395 et  
20       seq.) for similar services if such services are covered  
21       under title XVIII of the Social Security Act (42  
22       U.S.C. 1395 et seq.).

23            (7) FUNDING; PERIODIC REVIEW.—

24            (A) FUNDING.—The Administrator shall  
25       make such funds available from the Fund to

1           implement this section, with a minimum of  
2           \$20,000,000 but not more than \$30,000,000  
3           each year in each of the 5 years following the  
4           effective date of the medical screening program.  
5           Notwithstanding the preceding sentence, the  
6           Administrator shall suspend the operation of  
7           the program or reduce its funding level if nec-  
8           essary to preserve the solvency of the Fund and  
9           to prevent the sunset of the overall program  
10          under section 405(g).

11                 (B) REVIEW.—The Administrator may re-  
12          duce the amount of funding below \$20,000,000  
13          each year if the program is fully implemented.  
14          The Administrator's first annual report under  
15          section 405 following the close of the 4th year  
16          of operation of the medical screening program  
17          shall include an analysis of the usage of the  
18          program, its cost and effectiveness, its medical  
19          value, and the need to continue that program  
20          for an additional 5-year period. The Adminis-  
21          trator shall also recommend to Congress any  
22          improvements that may be required to make the  
23          program more effective, efficient, and economi-  
24          cal, and shall recommend a funding level for the  
25          program for the 5 years following the period of

1           initial funding referred to under subparagraph  
2           (A).

3           (d) LIMITATION.—In no event shall the total amount  
4 allocated to the medical screening program established  
5 under this subsection over the lifetime of the Fund exceed  
6 \$600,000,000.

7           (e) MEDICAL MONITORING PROGRAM AND PROTO-  
8 COLS.—

9           (1) IN GENERAL.—The Administrator shall es-  
10          tablish procedures for a medical monitoring program  
11          for persons exposed to asbestos who have been ap-  
12          proved for level I compensation under section 131.

13          (2) PROCEDURES.—The procedures for medical  
14          monitoring shall include—

15                (A) specific medical tests to be provided to  
16                eligible individuals and the periodicity of those  
17                tests, which shall initially be provided every 3  
18                years and include—

19                       (i) administration of a health evalua-  
20                       tion and work history questionnaire;

21                       (ii) physical examinations, including  
22                       blood pressure measurement, chest exam-  
23                       ination, and examination for clubbing;

24                       (iii) AP and lateral chest x-ray; and

1 (iv) spirometry performed according  
2 to ATS standards;

3 (B) qualifications of medical providers who  
4 are to provide the tests required under subpara-  
5 graph (A); and

6 (C) administrative provisions for reim-  
7 bursement from the Fund of the costs of moni-  
8 toring eligible claimants, including the costs as-  
9 sociated with the visits of the claimants to phy-  
10 sicians in connection with medical monitoring,  
11 and with the costs of performing and analyzing  
12 the tests.

13 (3) PREFERENCES.—

14 (A) IN GENERAL.—In administering the  
15 monitoring program under this subsection, pref-  
16 erence shall be given to medical and program  
17 providers with—

18 (i) a demonstrated capacity for identi-  
19 fying, contacting, and evaluating popu-  
20 lations of workers or others previously ex-  
21 posed to asbestos; and

22 (ii) experience in establishing net-  
23 works of medical providers to conduct med-  
24 ical screening and medical monitoring ex-  
25 aminations.

1 (B) PROVISION OF LISTS.—Claimants that  
2 are eligible to participate in the medical moni-  
3 toring program shall be provided with a list of  
4 approved providers in their geographic area at  
5 the time such claimants become eligible to re-  
6 ceive medical monitoring.

7 (f) CONTRACTS.—The Administrator may enter into  
8 contracts with qualified program providers that would per-  
9 mit the program providers to undertake large-scale med-  
10 ical screening and medical monitoring programs by means  
11 of subcontracts with a network of medical providers, or  
12 other health providers.

13 (g) REVIEW.—Not later than 5 years after the date  
14 of enactment of this Act, and every 5 years thereafter,  
15 the Administrator shall review, and if necessary update,  
16 the protocols and procedures established under this sec-  
17 tion.

18 **SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND**  
19 **TREATMENT PROGRAM.**

20 (a) IN GENERAL.—There is established the National  
21 Mesothelioma Research and Treatment Program (referred  
22 to in this section as the “Program”) to investigate and  
23 advance the detection, prevention, treatment, and cure of  
24 malignant mesothelioma.

25 (b) MESOTHELIOMA CENTERS.—

1           (1) IN GENERAL.—The Administrator shall  
2           make available \$1,500,000 from the Fund, and the  
3           Director of the National Institutes of Health shall  
4           make available \$1,000,000 from amounts available  
5           to the Director, for each of fiscal years 2006  
6           through 2015, for the establishment of each of 10  
7           mesothelioma disease research and treatment cen-  
8           ters.

9           (2) REQUIREMENTS.—The Director of the Na-  
10          tional Institutes of Health, in consultation with the  
11          Medical Advisory Committee, shall conduct a com-  
12          petitive peer review process to select sites for the  
13          centers described in paragraph (1). The Director  
14          shall ensure that sites selected under this paragraph  
15          are—

16                (A) geographically distributed throughout  
17                the United States with special consideration  
18                given to areas of high incidence of mesothe-  
19                lioma disease;

20                (B) closely associated with Department of  
21                Veterans Affairs medical centers, in order to  
22                provide research benefits and care to veterans  
23                who have suffered excessively from mesothe-  
24                lioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—



1           (1) ESTABLISHMENT.—The Administrator shall  
2       make available \$1,000,000 from the Fund, and the  
3       Director of the National Institutes of Health shall  
4       make available \$1,000,000 from amounts available  
5       to the Director, for each of fiscal years 2006  
6       through 2015 for the establishment, maintenance,  
7       and operation of a National Mesothelioma Registry  
8       to collect data regarding symptoms, pathology, eval-  
9       uation, treatment, outcomes, and quality of life and  
10      a Tissue Bank to include the pre- and post-treat-  
11      ment blood (serum and blood cells) specimens as  
12      well as tissue specimens from biopsies and surgery.  
13      Not less than \$500,000 of the amount made avail-  
14      able under the preceding sentence in each fiscal year  
15      shall be allocated for the collection and maintenance  
16      of tissue specimens.

17           (2) REQUIREMENTS.—The Director of the Na-  
18      tional Institutes of Health, with the advice and con-  
19      sent of the Medical Advisory Committee, shall con-  
20      duct a competitive peer review process to select a  
21      site to administer the Registry and Tissue Bank de-  
22      scribed in paragraph (1). The Director shall ensure  
23      that the site selected under this paragraph—

1 (A) is available to all mesothelioma pa-  
2 tients and qualifying physicians throughout the  
3 United States;

4 (B) is subject to all applicable medical and  
5 patient privacy laws and regulations;

6 (C) is carrying out activities to ensure that  
7 data is accessible via the Internet; and

8 (D) provides data and tissue samples to  
9 qualifying researchers and physicians who apply  
10 for such data in order to further the under-  
11 standing, prevention, screening, diagnosis, or  
12 treatment of malignant mesothelioma.

13 (d) CENTER FOR MESOTHELIOMA EDUCATION.—

14 (1) ESTABLISHMENT.—The Administrator shall  
15 make available \$1,000,000 from the Fund, and the  
16 Director of the National Institutes of Health shall  
17 make available \$1,000,000 from amounts available  
18 to the Director, for each of fiscal years 2006  
19 through 2015 for the establishment, with the advice  
20 and consent of the Medical Advisory Committee, of  
21 a Center for Mesothelioma Education (referred to in  
22 this section as the “Center”) to—

23 (A) promote mesothelioma awareness and  
24 education;

1 (B) assist mesothelioma patients and their  
2 family members in obtaining necessary informa-  
3 tion; and

4 (C) work with the centers established  
5 under subsection (b) in advancing mesothelioma  
6 research.

7 (2) ACTIVITIES.—The Center shall—

8 (A) educate the public about the new ini-  
9 tiatives contained in this section through a Na-  
10 tional Mesothelioma Awareness Campaign;

11 (B) develop and maintain a Mesothelioma  
12 Educational Resource Center (referred to in  
13 this section as the “MERCİ”), that is accessible  
14 via the Internet, to provide mesothelioma pa-  
15 tients, family members, and front-line physi-  
16 cians with comprehensive, current information  
17 on mesothelioma and its treatment, as well as  
18 on the existence of, and general claim proce-  
19 dures for the Asbestos Injury Claims Resolution  
20 Fund;

21 (C) through the MERCİ and otherwise,  
22 educate mesothelioma patients, family members,  
23 and front-line physicians about, and encourage  
24 such individuals to participate in, the centers

1 established under subsection (b), the Registry  
2 and the Tissue Bank;

3 (D) complement the research efforts of the  
4 centers established under subsection (b) by  
5 awarding competitive, peer-reviewed grants for  
6 the training of clinical specialist fellows in  
7 mesothelioma, and for highly innovative, experi-  
8 mental or pre-clinical research; and

9 (E) conduct an annual International Meso-  
10 thelioma Symposium.

11 (3) REQUIREMENTS.—The Center shall—

12 (A) be a nonprofit corporation under sec-  
13 tion 501(c)(3) of the Internal Revenue Code of  
14 1986;

15 (B) be a separate entity from and not an  
16 affiliate of any hospital, university, or medical  
17 or research institution; and

18 (C) demonstrate a history of program  
19 spending that is devoted specifically to the mis-  
20 sion of extending the survival of current and fu-  
21 ture mesothelioma patients, including a history  
22 of soliciting, peer reviewing through a competi-  
23 tive process, and funding research grant appli-  
24 cations relating to the detection, prevention,  
25 treatment, and cure of mesothelioma.

1           (4) CONTRACTS FOR OVERSIGHT.—The Direc-  
2           tor of the National Institutes of Health may enter  
3           into contracts with the Center for the selection and  
4           oversight of the centers established under subsection  
5           (b), or selection of the director of the Registry and  
6           the Tissue Bank under subsection (c) and oversight  
7           of the Registry and the Tissue Bank.

8           (e) REPORT AND RECOMMENDATIONS.—Not later  
9           than September 30, 2015, The Director of the National  
10          Institutes of Health shall, after opportunity for public  
11          comment and review, publish and provide to Congress a  
12          report and recommendations on the results achieved and  
13          information gained through the Program, including—

14                (1) information on the status of mesothelioma  
15                as a national health issue, including—

16                    (A) annual United States incidence and  
17                    death rate information and whether such rates  
18                    are increasing or decreasing;

19                    (B) the average prognosis; and

20                    (C) the effectiveness of treatments and  
21                    means of prevention;

22                (2) promising advances in mesothelioma treat-  
23                ment and research which could be further developed  
24                if the Program is reauthorized; and

1           (3) a summary of advances in mesothelioma  
 2           treatment made in the 10-year period prior to the  
 3           report and whether those advances would justify  
 4           continuation of the Program and whether it should  
 5           be reauthorized for an additional 10 years.

6           (f) SEVERABILITY.—If any provision of this Act, or  
 7           amendment made by this Act, or the application of such  
 8           provision or amendment to any person or circumstance is  
 9           held to be unconstitutional, the remainder of this Act (in-  
 10          cluding this section), the amendments made by this Act,  
 11          and the application of the provisions of such to any person  
 12          or circumstance shall not be affected thereby.

13          (g) REGULATIONS.—The Director of the National In-  
 14          stitutes of Health shall promulgate regulations to provide  
 15          for the implementation of this section.

## 16       **TITLE III—JUDICIAL REVIEW**

### 17       **SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

18          (a) EXCLUSIVE JURISDICTION.—The United States  
 19          Court of Appeals for the District of Columbia Circuit shall  
 20          have exclusive jurisdiction over any action to review rules  
 21          or regulations promulgated by the Administrator or the  
 22          Asbestos Insurers Commission under this Act.

23          (b) PERIOD FOR FILING PETITION.—A petition for  
 24          review under this section shall be filed not later than 60

1 days after the date notice of such promulgation appears  
2 in the Federal Register.

3 (c) EXPEDITED PROCEDURES.—The United States  
4 Court of Appeals for the District of Columbia shall provide  
5 for expedited procedures for reviews under this section.

6 **SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.**

7 (a) IN GENERAL.—Any claimant adversely affected  
8 or aggrieved by a final decision of the Administrator  
9 awarding or denying compensation under title I may peti-  
10 tion for judicial review of such decision. Any petition for  
11 review under this section shall be filed within 90 days of  
12 the issuance of a final decision of the Administrator.

13 (b) EXCLUSIVE JURISDICTION.—A petition for review  
14 may only be filed in the United States Court of Appeals  
15 for the circuit in which the claimant resides at the time  
16 of the issuance of the final order.

17 (c) STANDARD OF REVIEW.—The court shall uphold  
18 the decision of the Administrator unless the court deter-  
19 mines, upon review of the record as a whole, that the deci-  
20 sion is not supported by substantial evidence, is contrary  
21 to law, or is not in accordance with procedure required  
22 by law.

23 (d) EXPEDITED PROCEDURES.—The United States  
24 Court of Appeals shall provide for expedited procedures  
25 for reviews under this section.

1 **SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESS-**  
2 **MENTS.**

3 (a) **EXCLUSIVE JURISDICTION.**—The United States  
4 Court of Appeals for the District of Columbia Circuit shall  
5 have exclusive jurisdiction over any action to review a final  
6 determination by the Administrator or the Asbestos Insur-  
7 ers Commission regarding the liability of any person to  
8 make a payment to the Fund, including a notice of appli-  
9 cable subtier assignment under section 204(i), a notice of  
10 financial hardship or inequity determination under section  
11 204(d), a notice of a distributor's adjustment under sec-  
12 tion 204(m), and a notice of insurer participant obligation  
13 under section 212(b).

14 (b) **PERIOD FOR FILING ACTION.**—A petition for re-  
15 view under subsection (a) shall be filed not later than 60  
16 days after a final determination by the Administrator or  
17 the Commission giving rise to the action. Any defendant  
18 participant who receives a notice of its applicable subtier  
19 under section 204(i), a notice of financial hardship or in-  
20 equity determination under section 204(d), or a notice of  
21 a distributor's adjustment under section 204(m), shall  
22 commence any action within 30 days after a decision on  
23 rehearing under section 204(i)(10), and any insurer par-  
24 ticipant who receives a notice of a payment obligation  
25 under section 212(b) shall commence any action within 30



1 days after receiving such notice. The court shall give such  
2 action expedited consideration.

3 **SEC. 304. OTHER JUDICIAL CHALLENGES.**

4 (a) **EXCLUSIVE JURISDICTION.**—The United States  
5 District Court for the District of Columbia shall have ex-  
6 clusive jurisdiction over any action for declaratory or in-  
7 junctive relief challenging any provision of this Act. An  
8 action under this section shall be filed not later than 60  
9 days after the date of enactment of this Act or 60 days  
10 after the final action by the Administrator or the Commis-  
11 sion giving rise to the action, whichever is later.

12 (b) **DIRECT APPEAL.**—A final decision in the action  
13 shall be reviewable on appeal directly to the Supreme  
14 Court of the United States. Such appeal shall be taken  
15 by the filing of a notice of appeal within 30 days, and  
16 the filing of a jurisdictional statement within 60 days, of  
17 the entry of the final decision.

18 (c) **EXPEDITED PROCEDURES.**—It shall be the duty  
19 of the United States District Court for the District of Co-  
20 lumbia and the Supreme Court of the United States to  
21 advance on the docket and to expedite to the greatest pos-  
22 sible extent the disposition of the action and appeal.

23 **SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL RE-**  
24 **VIEW.**

25 (a) **NO STAYS.**—

1           (1) PAYMENTS.—No court may issue a stay of  
2           payment by any party into the Fund pending its  
3           final judgment.

4           (2) LEGAL CHALLENGES.—No court may issue  
5           a stay or injunction pending final judicial action, in-  
6           cluding the exhaustion of all appeals, on a legal chal-  
7           lenge to this Act or any portion of this Act.

8           (b) EXCLUSIVITY OF REVIEW.—An action of the Ad-  
9           ministrators or the Asbestos Insurers Commission for  
10          which review could have been obtained under section 301,  
11          302, or 303 shall not be subject to judicial review in any  
12          other proceeding.

13          (c) CONSTITUTIONAL REVIEW.—

14               (1) IN GENERAL.—The United States District  
15          Court for the District of Columbia shall have exclu-  
16          sive jurisdiction over any action challenging the con-  
17          stitutionality of any provision or application of this  
18          Act. The following rules shall apply:

19                       (A) The action shall be filed in the United  
20          States District Court for the District of Colum-  
21          bia and shall be heard by a 3-judge court con-  
22          vened under section 2284 of title 28, United  
23          States Code.

24                       (B) A final decision in the action shall be  
25          reviewable only by appeal directly to the Su-

1           preme Court of the United States. Such appeal  
2           shall be taken by the filing of a notice of appeal  
3           within 10 days, and the filing of a jurisdictional  
4           statement within 30 days, after the entry of the  
5           final decision.

6           (C) It shall be the duty of the United  
7           States District Court for the District of Colum-  
8           bia and the Supreme Court of the United  
9           States to advance on the docket and to expedite  
10          to the greatest possible extent the disposition of  
11          the action and appeal.

12          (2) REPAYMENT TO ASBESTOS TRUST AND  
13          CLASS ACTION TRUST.—If the transfer of the assets  
14          of any asbestos trust of a debtor or any class action  
15          trust (or this Act as a whole) is held to be unconsti-  
16          tutional or otherwise unlawful, the Fund shall trans-  
17          fer the remaining balance of such assets (determined  
18          under section 405(f)(1)(A)(iii)) back to the appro-  
19          priate asbestos trust or class action trust within 90  
20          days after final judicial action on the legal challenge,  
21          including the exhaustion of all appeals.

1       **TITLE IV—MISCELLANEOUS**  
 2                   **PROVISIONS**

3   **SEC. 401. FALSE INFORMATION.**

4       (a) IN GENERAL.—Chapter 63 of title 18, United  
 5 States Code, is amended by adding at the end the fol-  
 6 lowing:

7   **“§ 1351. Fraud and false statements in connection**  
 8                   **with participation in Asbestos Injury**  
 9                   **Claims Resolution Fund**

10       “(a) FRAUD RELATING TO ASBESTOS INJURY  
 11 CLAIMS RESOLUTION FUND.—Whoever knowingly and  
 12 willfully executes, or attempts to execute, a scheme or arti-  
 13 fice to defraud the Office of Asbestos Disease Compensa-  
 14 tion or the Asbestos Insurers Commission under title II  
 15 of the Fairness in Asbestos Injury Resolution Act of 2006  
 16 shall be fined under this title or imprisoned not more than  
 17 20 years, or both.

18       “(b) FALSE STATEMENT RELATING TO ASBESTOS  
 19 INJURY CLAIMS RESOLUTION FUND.—

20               “(1) IN GENERAL.—It shall be unlawful for any  
 21 person, in any matter involving the Office of Asbes-  
 22 tos Disease Compensation or the Asbestos Insurers  
 23 Commission, to knowingly and willfully—

24                   “(A) falsify, conceal, or cover up by any  
 25 trick, scheme, or device a material fact;

1           “(B) make any materially false, fictitious,  
2           or fraudulent statement or representation; or

3           “(C) make or use any false writing or doc-  
4           ument knowing the same to contain any materi-  
5           ally false, fictitious, or fraudulent statement or  
6           entry, in connection with the award of a claim  
7           or the determination of a participant’s payment  
8           obligation under title I or II of the Fairness in  
9           Asbestos Injury Resolution Act of 2006.

10          “(2) PENALTY.—A person who violates this  
11          subsection shall be fined under this title or impris-  
12          oned not more than 10 years, or both.”.

13          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
14          The table of sections for chapter 63 of title 18, United  
15          States Code, is amended by adding at the end the fol-  
16          lowing:

          “1351. Fraud and false statements in connection with participation in Asbestos  
          Injury Claims Resolution Fund.”.

17   **SEC. 402. EFFECT ON BANKRUPTCY LAWS.**

18          (a) NO AUTOMATIC STAY.—Section 362(b) of title  
19          11, United States Code, is amended—

20                 (1) in paragraph (17), by striking “or” at the  
21                 end;

22                 (2) in paragraph (18), by striking the period at  
23                 the end and inserting “; or”; and

1           (3) by inserting after paragraph (18) the fol-  
2       lowing:

3           “(19) under subsection (a) of this section of the  
4       enforcement of any payment obligations under sec-  
5       tion 204 of the Fairness in Asbestos Injury Resolu-  
6       tion Act of 2006, against a debtor, or the property  
7       of the estate of a debtor, that is a participant (as  
8       that term is defined in section 3 of that Act).”.

9       (b) ASSUMPTION OF EXECUTORY CONTRACT.—Sec-  
10      tion 365 of title 11, United States Code, is amended by  
11      adding at the end the following:

12       “(p) If a debtor is a participant (as that term is de-  
13      fined in section 3 of the Fairness in Asbestos Injury Reso-  
14      lution Act of 2006), the trustee shall be deemed to have  
15      assumed all executory contracts entered into by the partic-  
16      ipant under section 204 of that Act. The trustee may not  
17      reject any such executory contract.”.

18       (c) ALLOWED ADMINISTRATIVE EXPENSES.—Section  
19      503 of title 11, United States Code, is amended by adding  
20      at the end the following:

21       “(c)(1) Claims or expenses of the United States, the  
22      Attorney General, or the Administrator (as that term is  
23      defined in section 3 of the Fairness in Asbestos Injury  
24      Resolution Act of 2006) based upon the asbestos payment  
25      obligations of a debtor that is a Participant (as that term

1 is defined in section 3 of that Act), shall be paid as an  
 2 allowed administrative expense. The debtor shall not be  
 3 entitled to either notice or a hearing with respect to such  
 4 claims.

5 “(2) For purposes of paragraph (1), the term ‘asbes-  
 6 tos payment obligation’ means any payment obligation  
 7 under title II of the Fairness in Asbestos Injury Resolu-  
 8 tion Act of 2006.”.

9 (d) NO DISCHARGE.—Section 523 of title 11, United  
 10 States Code, is amended by adding at the end the fol-  
 11 lowing:

12 “(f) A discharge under section 727, 1141, 1228, or  
 13 1328 of this title does not discharge any debtor that is  
 14 a participant (as that term is defined in section 3 of the  
 15 Fairness in Asbestos Injury Resolution Act of 2006) of  
 16 the debtor’s payment obligations assessed against the par-  
 17 ticipant under title II of that Act.”.

18 (e) PAYMENT.—Section 524 of title 11, United States  
 19 Code, is amended by adding at the end the following:

20 “(i) PARTICIPANT DEBTORS.—

21 “(1) IN GENERAL.—Paragraphs (2) and (3)  
 22 shall apply to a debtor who—

23 “(A) is a participant that has made prior  
 24 asbestos expenditures (as such terms are de-

1           fined in the Fairness in Asbestos Injury Resolu-  
2           tion Act of 2006); and

3           “(B) is subject to a case under this title  
4           that is pending—

5           “(i) on the date of enactment of the  
6           Fairness in Asbestos Injury Resolution Act  
7           of 2006; or

8           “(ii) at any time during the 1-year pe-  
9           riod preceding the date of enactment of  
10          that Act.

11          “(2) TIER I DEBTORS.—A debtor that has been  
12          assigned to Tier I under section 202 of the Fairness  
13          in Asbestos Injury Resolution Act of 2006, shall  
14          make payments in accordance with sections 202 and  
15          203 of that Act.

16          “(3) TREATMENT OF PAYMENT OBLIGA-  
17          TIONS.—All payment obligations of a debtor under  
18          sections 202 and 203 of the Fairness in Asbestos In-  
19          jury Resolution Act of 2006 shall—

20               “(A) constitute costs and expenses of ad-  
21               ministration of a case under section 503 of this  
22               title;

23               “(B) notwithstanding any case pending  
24               under this title, be payable in accordance with  
25               section 202 of that Act;



1 “(C) not be stayed;

2 “(D) not be affected as to enforcement or  
3 collection by any stay or injunction of any  
4 court; and

5 “(E) not be impaired or discharged in any  
6 current or future case under this title.”.

7 (f) TREATMENT OF TRUSTS.—Section 524 of title  
8 11, United States Code, as amended by this Act, is  
9 amended by adding at the end the following:

10 “(j) ASBESTOS TRUSTS.—

11 “(1) IN GENERAL.—A trust shall assign a por-  
12 tion of the corpus of the trust to the Asbestos Injury  
13 Claims Resolution Fund (referred to in this sub-  
14 section as the ‘Fund’) as established under the Fair-  
15 ness in Asbestos Injury Resolution Act of 2006 if  
16 the trust qualifies as a ‘trust’ under section 201 of  
17 that Act.

18 “(2) TRANSFER OF TRUST ASSETS.—

19 “(A) IN GENERAL.—

20 “(i) Except as provided under clause  
21 (ii) of this subparagraph and subpara-  
22 graphs (B), (C), and (E), the assets in any  
23 trust established to provide compensation  
24 for asbestos claims (as defined in section 3  
25 of the Fairness in Asbestos Injury Resolu-

tion Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

“(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

1                   “(I) In the case of a trust estab-  
2                   lished on or before December 31,  
3                   2005, such trust shall transfer 90  
4                   percent of the assets in such trust to  
5                   the Fund not later than 90 days after  
6                   the date of enactment of the Fairness  
7                   in Asbestos Injury Resolution Act of  
8                   2006.

9                   “(II) In the case of a trust estab-  
10                  lished after December 31, 2005, such  
11                  trust shall transfer 88 percent of the  
12                  assets in such trust to the Fund not  
13                  later than 90 days after the date of  
14                  enactment of the Fairness in Asbestos  
15                  Injury Resolution Act of 2006.

16                  “(iii) Not later than 90 days after the  
17                  date on which the Administrator of the Of-  
18                  fice of Asbestos Disease Compensation (re-  
19                  ferred to in this section as the ‘Adminis-  
20                  trator’) certifies in accordance with section  
21                  106(f)(3)(E)(ii) of the Fairness in Asbes-  
22                  tos Injury Resolution Act of 2006 that the  
23                  Fund is fully operational and paying all  
24                  valid asbestos claims at a reasonable rate,  
25                  any trust transferring assets under clause

1 (ii) shall transfer all remaining assets in  
2 such trust to the Fund. The transfer re-  
3 quired by this clause shall not include any  
4 trust assets needed to pay—

5 “(I) previously incurred expenses;

6 or

7 “(II) claims determined to be eli-  
8 gible for compensation under clause  
9 (vi).

10 “(iv) Except as provided under sub-  
11 paragraph (B), the Administrator of the  
12 Fund shall accept any assets transferred  
13 under clauses (ii) or (iii) and utilize them  
14 for any purposes for the Fund under sec-  
15 tion 221 of the Fairness in Asbestos Injury  
16 Resolution Act of 2006, including the pay-  
17 ment of claims for awards under such Act  
18 to beneficiaries of the trust from which the  
19 assets were transferred.

20 “(v) Notwithstanding any other provi-  
21 sion of Federal or State law, no liability of  
22 any kind may be imposed on a trustee of  
23 a trust for transferring assets to the Fund  
24 in accordance with clause (i).

1           “(vi) Any trust transferring assets  
2           under clause (ii) shall be subject to the fol-  
3           lowing requirements:

4                   “(I) The trust may continue to  
5                   process asbestos claims, make eligi-  
6                   bility determinations, and pay claims  
7                   in a manner consistent with this  
8                   clause if a claimant—

9                           “(aa) provides to the trust a  
10                          copy of a binding election sub-  
11                          mitted to Administrator waiving  
12                          the right to secure compensation  
13                          under section 106(f)(2) of the  
14                          Fairness in Asbestos Injury Res-  
15                          olution Act of 2006, unless the  
16                          claimant is permitted under sec-  
17                          tion 106(f)(2)(B) of such Act to  
18                          seek a judgment or order for  
19                          monetary damages from a Fed-  
20                          eral or State court;

21                           “(bb) meets the require-  
22                          ments for compensation under  
23                          the distribution plan for the trust  
24                          as of the date of enactment of

1 the Fairness in Asbestos Injury  
2 Resolution Act of 2006;

3 “(cc) for any condition satis-  
4 fies the medical criteria under  
5 the distribution plan for the trust  
6 that is most nearly equivalent to  
7 the medical criteria described in  
8 paragraph (2), (3), (4), (5), (7),  
9 (8), or (9) of section 121(d) of  
10 the Fairness in Asbestos Injury  
11 Resolution Act of 2006, except  
12 that, notwithstanding any provi-  
13 sion of the distribution plan of  
14 the trust to the contrary, the  
15 trust shall not accept the results  
16 of a DLCO test (as such test is  
17 defined in section 121(a) of the  
18 Fairness in Asbestos Injury Res-  
19 olution Act of 2006) for the pur-  
20 pose of demonstrating respiratory  
21 impairment; and

22 “(dd) for any of the cancers  
23 listed in section 121(d)(6) of the  
24 Fairness in Asbestos Injury Res-  
25 olution Act of 2006 does not

1 seek, and the trust does not pay,  
2 any compensation until such time  
3 as the Institute of Medicine finds  
4 that there is a causal relationship  
5 between asbestos exposure and  
6 such cancer, in which case such  
7 claims may be paid if such claims  
8 otherwise qualify for compensa-  
9 tion under the distribution plan  
10 of the trust as of the date of en-  
11 actment of the Fairness in As-  
12 bestos Injury Resolution Act of  
13 2006.

14 “(II) The trust shall not accept  
15 medical evidence from any physician,  
16 medical facility, or laboratory whose  
17 evidence would be not be accepted as  
18 evidence—

19 “(aa) under the Manville  
20 Trust as of the date of enact-  
21 ment of the Fairness in Asbestos  
22 Injury Resolution Act of 2006; or

23 “(bb) by the Administrator  
24 under section 115(a)(2) of such  
25 Act.

1           “(III) The trust shall not amend  
2           its scheduled payment amount or pay-  
3           ment percentage as in effect on the  
4           date of enactment of the Fairness in  
5           Asbestos Injury Resolution Act of  
6           2006.

7           “(IV) The trust shall not amend  
8           its eligibility criteria after the date of  
9           enactment of the Fairness in Asbestos  
10          Injury Resolution Act of 2006, except  
11          to conform any criteria in any cat-  
12          egory under the distribution plan of  
13          the trust with related criteria in a re-  
14          lated category under section 121 of  
15          the Fairness in Asbestos Injury Reso-  
16          lution Act of 2006.

17          “(V) The trust shall notify the  
18          Administrator of the Fund of any  
19          claim determined to be eligible for  
20          compensation after the date of enact-  
21          ment of the Fairness in Asbestos In-  
22          jury Resolution Act of 2006, and the  
23          amount of any such compensation  
24          awarded to the claimant of such  
25          claim. The notification required by



1           this subclause shall be made in such  
2           form as the Administrator shall re-  
3           quire, and not later than 15 days  
4           after the date the determination is  
5           made.

6                     “(VI) The trust shall not pay any  
7           claim without a certification by a  
8           claimant, subject to the penalties de-  
9           scribed in the Fairness in Asbestos  
10          Injury Resolution Act of 2006, stating  
11          the amount of collateral source com-  
12          pensation that such claimant has re-  
13          ceived, or is entitled to receive, under  
14          section 134 of the Fairness in Asbes-  
15          tos Injury Resolution Act of 2006. In  
16          the event that collateral source com-  
17          pensation exceeds the amount that the  
18          claimant would be paid (excluding any  
19          adjustments under section 131(b) (3)  
20          and (4) of the Act) for such condition  
21          under the Act most similar to the  
22          claimant’s claim with the trust, such  
23          trust shall not make any payment to  
24          the claimant.

1           “(VII) Upon finding that the  
2           trust has breached any condition or  
3           conditions of this clause, the Adminis-  
4           trator shall require the immediate  
5           payment of remaining trust assets  
6           into the Fund in accordance with sec-  
7           tion 402(f) of the Fairness in Asbes-  
8           tos Injury Resolution Act of 2006.  
9           The Administrator shall be entitled to  
10          an injunction against further pay-  
11          ments of nonliquidated claims from  
12          the assets of the trust during the  
13          pendency of any dispute regarding the  
14          findings of noncompliance by the Ad-  
15          ministrator. The court in which any  
16          action to enforce the obligations of the  
17          trust is pending shall afford the ac-  
18          tion expedited consideration.

19               “(B) AUTHORITY TO REFUSE ASSETS.—  
20          The Administrator of the Fund may refuse to  
21          accept any asset that the Administrator deter-  
22          mines may create liability for the Fund in ex-  
23          cess of the value of the asset.

24               “(C) ALLOCATION OF TRUST ASSETS.—If  
25          a trust under subparagraph (A) has bene-

1           ficiaries with claims that are not asbestos  
2           claims, the assets transferred to the Fund  
3           under subparagraph (A) shall not include assets  
4           allocable to such beneficiaries. The trustees of  
5           any such trust shall determine the amount of  
6           such trust assets to be reserved for the con-  
7           tinuing operation of the trust in processing and  
8           paying claims that are not asbestos claims. The  
9           trustees shall demonstrate to the satisfaction of  
10          the Administrator, or by clear and convincing  
11          evidence in a proceeding brought before the  
12          United States District Court for the District of  
13          Columbia in accordance with paragraph (4),  
14          that the amount reserved is properly allocable  
15          to claims other than asbestos claims.

16               “(D) SALE OF FUND ASSETS.—The invest-  
17               ment requirements under section 222 of the  
18               Fairness in Asbestos Injury Resolution Act of  
19               2006 shall not be construed to require the Ad-  
20               ministrator of the Fund to sell assets trans-  
21               ferred to the Fund under subparagraph (A).

22               “(E) LIQUIDATED CLAIMS.—Except as  
23               specifically provided in this subparagraph, all  
24               asbestos claims against a trust are superseded  
25               and preempted as of the date of enactment of

1 the Fairness in Asbestos Injury Resolution Act  
2 of 2006, and a trust shall not make any pay-  
3 ment relating to asbestos claims after that date.  
4 If, in the ordinary course and the normal and  
5 usual administration of the trust consistent  
6 with past practices, a trust had before the date  
7 of enactment of the Fairness in Asbestos Injury  
8 Resolution Act of 2006, made all determina-  
9 tions necessary to entitle an individual claimant  
10 to a noncontingent cash payment from the  
11 trust, the trust shall (i) make any lump-sum  
12 cash payment due to that claimant, and (ii)  
13 make or provide for all remaining noncontin-  
14 gent payments on any award being paid or  
15 scheduled to be paid on an installment basis, in  
16 each case only to the same extent that the trust  
17 would have made such cash payments in the or-  
18 dinary course and consistent with past practices  
19 before enactment of that Act. A trust shall not  
20 make any payment in respect of any alleged  
21 contingent right to recover any greater amount  
22 than the trust had already paid, or had com-  
23 pleted all determinations necessary to pay, to a  
24 claimant in cash in accordance with its ordinary

1 distribution procedures in effect as of June 1,  
2 2003.

3 “(3) INJUNCTION.—

4 “(A) IN GENERAL.—Any injunction issued  
5 as part of the formation of a trust described in  
6 paragraph (1) shall remain in full force and ef-  
7 fect, except that any provision of such an in-  
8 junction channeling asbestos claims to such a  
9 trust for resolution shall have no force and ef-  
10 fect. No court, Federal or State, may enjoin the  
11 transfer of assets by a trust to the Fund in ac-  
12 cordance with this subsection pending resolu-  
13 tion of any litigation challenging such transfer  
14 or the validity of this subsection or of any pro-  
15 vision of the Fairness in Asbestos Injury Reso-  
16 lution Act of 2006, and an interlocutory order  
17 denying such relief shall not be subject to im-  
18 mediate appeal under section 1291(a) of title  
19 28.

20 “(B) AVAILABILITY OF FUND ASSETS.—

21 Notwithstanding any other provision of law,  
22 once such a transfer has been made, the assets  
23 of the Fund shall be available to satisfy any  
24 final judgment entered in such an action and

1           such transfer shall no longer be subject to any  
2           appeal or review—

3                   “(i) declaring that the transfer ef-  
4                   fected a taking of a right or property for  
5                   which an individual is constitutionally enti-  
6                   tled to just compensation; or

7                   “(ii) requiring the transfer back to a  
8                   trust of any or all assets transferred by  
9                   that trust to the Fund.

10           “(4) JURISDICTION.—Solely for purposes of im-  
11           plementing this subsection, personal jurisdiction over  
12           every covered trust, the trustees thereof, and any  
13           other necessary party, and exclusive subject matter  
14           jurisdiction over every question arising out of or re-  
15           lated to this subsection, shall be vested in the United  
16           States District Court for the District of Columbia.  
17           Notwithstanding any other provision of law, includ-  
18           ing section 1127 of this title, that court may make  
19           any order necessary and appropriate to facilitate  
20           prompt compliance with this subsection, including  
21           assuming jurisdiction over and modifying, to the ex-  
22           tent necessary, any applicable confirmation order or  
23           other order with continuing and prospective applica-  
24           tion to a covered trust. The court may also resolve  
25           any related challenge to the constitutionality of this

1 subsection or of its application to any trust, trustee,  
2 or individual claimant. The Administrator of the  
3 Fund may bring an action seeking such an order or  
4 modification, under the standards of rule 60(b) of  
5 the Federal Rules of Civil Procedure or otherwise,  
6 and shall be entitled to intervene as of right in any  
7 action brought by any other party seeking interpre-  
8 tation, application, or invalidation of this subsection.  
9 Any order denying relief that would facilitate prompt  
10 compliance with the transfer provisions of this sub-  
11 section shall be subject to immediate appeal under  
12 section 304 of the Fairness in Asbestos Injury Reso-  
13 lution Act of 2006.”.

14 (g) NO AVOIDANCE OF TRANSFER.—Section 546 of  
15 title 11, United States Code, is amended by adding at the  
16 end the following:

17 “(h) Notwithstanding the rights and powers of a  
18 trustee under sections 544, 545, 547, 548, 549, and 550  
19 of this title, if a debtor is a participant (as that term is  
20 defined in section 3 of the Fairness in Asbestos Injury  
21 Resolution Act of 2006), the trustee may not avoid a  
22 transfer made by the debtor under its payment obligations  
23 under section 202 or 203 of that Act.”.

1 (h) CONFIRMATION OF PLAN.—Section 1129(a) of  
2 title 11, United States Code, is amended by adding at the  
3 end the following:

4 “(14) If the debtor is a participant (as that  
5 term is defined in section 3 of the Fairness in As-  
6 bestos Injury Resolution Act of 2006), the plan pro-  
7 vides for the continuation after its effective date of  
8 payment of all payment obligations under title II of  
9 that Act.”.

10 (i) EFFECT ON INSURANCE RECEIVERSHIP PRO-  
11 CEEDINGS.—

12 (1) LIEN.—In an insurance receivership pro-  
13 ceeding involving a direct insurer, reinsurer or run-  
14 off participant, there shall be a lien in favor of the  
15 Fund for the amount of any assessment and any  
16 such lien shall be given priority over all other claims  
17 against the participant in receivership, except for the  
18 expenses of administration of the receivership and  
19 the perfected claims of the secured creditors. Any  
20 State law that provides for priorities inconsistent  
21 with this provision is preempted by this Act.

22 (2) PAYMENT OF ASSESSMENT.—Payment of  
23 any assessment required by this Act shall not be  
24 subject to any automatic or judicially entered stay in  
25 any insurance receivership proceeding. This Act shall



1 preempt any State law requiring that payments by  
 2 a direct insurer, reinsurer or runoff participant in  
 3 an insurance receivership proceeding be approved by  
 4 a court, receiver or other person. Payments of as-  
 5 sessments by any direct insurer or reinsurer partici-  
 6 pant under this Act shall not be subject to the avoid-  
 7 ance powers of a receiver or a court in or relating  
 8 to an insurance receivership proceeding.

9 (j) **STANDING IN BANKRUPTCY PROCEEDINGS.**—The  
 10 Administrator shall have standing in any bankruptcy case  
 11 involving a debtor participant. No bankruptcy court may  
 12 require the Administrator to return property seized to sat-  
 13 isfy obligations to the Fund.

14 **SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

15 (a) **EFFECT ON FEDERAL AND STATE LAW.**—The  
 16 provisions of this Act shall supersede any Federal or State  
 17 law insofar as such law may relate to any asbestos claim,  
 18 including any claim described under subsection (e)(2).

19 (b) **EFFECT ON SILICA CLAIMS.**—

20 (1) **IN GENERAL.**—

21 (A) **RULE OF CONSTRUCTION.**—Nothing in  
 22 this Act shall be construed to preempt, bar, or  
 23 otherwise preclude any personal injury claim at-  
 24 tributable to exposure to silica as to which the  
 25 plaintiff—

1 (i) pleads with particularity and es-  
2 tablishes by a preponderance of evidence  
3 either that—

4 (I) no claim has been asserted or  
5 filed by or with respect to the exposed  
6 person in any forum for any asbestos-  
7 related condition and the exposed per-  
8 son (or another claiming on behalf of  
9 or through the exposed person) is not  
10 eligible for any monetary award under  
11 this Act; or

12 (II)(aa) the exposed person suf-  
13 fers or has suffered a functional im-  
14 pairment that was caused by exposure  
15 to silica; and

16 (bb) asbestos exposure was not a  
17 substantial contributing factor to such  
18 functional impairment; and

19 (ii) satisfies the requirements of para-  
20 graph (2) .

21 (B) PREEMPTION.—Claims attributable to  
22 exposure to silica that fail to meet the require-  
23 ments of subparagraph (A) shall be preempted  
24 by this Act.

25 (2) REQUIRED EVIDENCE.—

1           (A) IN GENERAL.—In any claim to which  
2           paragraph (1) applies, the initial pleading (or,  
3           for claims pending on the date of enactment of  
4           this Act, an amended pleading to be filed within  
5           60 days after such date, but not later than 60  
6           days before trial, shall plead with particularity  
7           the elements of subparagraph (A)(i)(I) or (II)  
8           and shall be accompanied by the information  
9           described under subparagraph (B)(i) through  
10          (iv).

11          (B) PLEADINGS.—If the claim pleads the  
12          elements of paragraph (1)(A)(i)(II) and by the  
13          information described under clauses (i) through  
14          (iv) of this subparagraph if the claim pleads the  
15          elements of paragraph (1)(A)(i)(I)—

16               (i) admissible evidence, including at a  
17               minimum, a B-reader's report, the under-  
18               lying x-ray film and such other evidence  
19               showing that the claim may be maintained  
20               and is not preempted under paragraph (1);

21               (ii) notice of any previous lawsuit or  
22               claim for benefits in which the exposed  
23               person, or another claiming on behalf of or  
24               through the injured person, asserted an in-

1 jury or disability based wholly or in part  
 2 on exposure to asbestos;

3 (iii) if known by the plaintiff after  
 4 reasonable inquiry by the plaintiff or his  
 5 representative, the history of the exposed  
 6 person's exposure, if any, to asbestos; and

7 (iv) copies of all medical and labora-  
 8 tory reports pertaining to the exposed per-  
 9 son that refer to asbestos or asbestos expo-  
 10 sure.

11 (3) STATUTE OF LIMITATIONS.—In general, the  
 12 statute of limitations for a silica claim shall be gov-  
 13 erned by applicable State law, except that in any  
 14 case under this subsection, the statute of limitations  
 15 shall only start to run when the plaintiff becomes  
 16 impaired.

17 (c) SUPERSEDING PROVISIONS.—

18 (1) IN GENERAL.—Except as provided under  
 19 paragraph (3) and section 106(f), any agreement,  
 20 understanding, or undertaking by any person or af-  
 21 filiated group with respect to the treatment of any  
 22 asbestos claim, including a claim described under  
 23 subsection (e)(2), that requires future performance  
 24 by any party, insurer of such party, settlement ad-

1        administrator, or escrow agent shall be superseded in  
2        its entirety by this Act.

3            (2) NO FORCE OR EFFECT.—Except as pro-  
4        vided under paragraph (3), any such agreement, un-  
5        derstanding, or undertaking by any such person or  
6        affiliated group shall be of no force or effect, and no  
7        person shall have any rights or claims with respect  
8        to any such agreement, understanding, or under-  
9        taking.

10          (3) EXCEPTION.—

11            (A) IN GENERAL.—Except as provided in  
12        section 202(f), nothing in this Act shall abro-  
13        gate a binding and legally enforceable written  
14        settlement agreement between any defendant  
15        participant or its insurer and a specific named  
16        plaintiff with respect to the settlement of an as-  
17        bestos claim of the plaintiff if—

18            (i) before the date of enactment of  
19        this Act, the settlement agreement was ex-  
20        ecuted by—

21            (I) the authorized legal rep-  
22        resentative acting on behalf of the set-  
23        tling defendant or insurer, the settling  
24        defendant or the settling insurer; and

1 (II)(aa) the specific individual  
2 plaintiff, or the individual's immediate  
3 relatives; or

4 (bb) an authorized legal rep-  
5 resentative acting on behalf of the  
6 plaintiff where the plaintiff is inca-  
7 pacitated and the settlement agree-  
8 ment is signed by that authorized  
9 legal representative;

10 (ii) the settlement agreement contains  
11 an express obligation by the settling de-  
12 fendant or settling insurer to make a fu-  
13 ture direct monetary payment or payments  
14 in a fixed amount or amounts to the indi-  
15 vidual plaintiff; and

16 (iii) within 30 days after the date of  
17 enactment of this Act, or such shorter time  
18 period specified in the settlement agree-  
19 ment, the plaintiff has fulfilled all condi-  
20 tions to payment under the settlement  
21 agreement.

22 (B) BANKRUPTCY-RELATED AGREE-  
23 MENTS.—The exception set forth in this para-  
24 graph shall not apply to any bankruptcy-related  
25 agreement.

1 (C) COLLATERAL SOURCE.—Any settle-  
2 ment payment under this section is a collateral  
3 source if the plaintiff seeks recovery from the  
4 Fund.

5 (D) ABROGATION.—Nothing in subpara-  
6 graph (A) shall abrogate a settlement agree-  
7 ment otherwise satisfying the requirements of  
8 that subparagraph if such settlement agreement  
9 expressly anticipates the enactment of this Act  
10 and provides for the effects of this Act.

11 (E) HEALTH CARE INSURANCE OR EX-  
12 PENSES SETTLEMENTS.—Nothing in this Act  
13 shall abrogate or terminate an otherwise fully  
14 enforceable settlement agreement which was ex-  
15 ecuted before the date of enactment of this Act  
16 directly by the settling defendant or the settling  
17 insurer and a specific named plaintiff to pay  
18 the health care insurance or health care ex-  
19 penses of the plaintiff.

20 (d) EXCLUSIVE REMEDY.—

21 (1) IN GENERAL.—Except as provided under  
22 paragraph (2) and section 106(f) of this Act and  
23 section 524(j)(3) of title 11, United States Code, as  
24 amended by this Act, the remedies provided under  
25 this Act shall be the exclusive remedy for any asbes-

1       tos claim, including any claim described in sub-  
2       section (e)(2), under any Federal or State law.

3           (2) CIVIL ACTIONS AT TRIAL.—

4           (A) IN GENERAL.—This Act shall not  
5       apply to any asbestos claim that—

6           (i) is a civil action filed in a Federal  
7       or State court (not including a filing in a  
8       bankruptcy court);

9           (ii) is not part of a consolidation of  
10      actions or a class action; and

11          (iii) on the date of enactment of this  
12      Act—

13           (I) in the case of a civil action  
14      which includes a jury trial, is before  
15      the jury after its impaneling and com-  
16      mencement of presentation of evi-  
17      dence, but before its deliberations;

18           (II) in the case of a civil action  
19      which includes a trial in which a judge  
20      is the trier of fact, is at the presen-  
21      tation of evidence at trial; or

22           (III) a verdict, final order, or  
23      final judgment has been entered by a  
24      trial court.



1 (B) NONAPPLICABILITY.—This Act shall  
2 not apply to a civil action described under sub-  
3 paragraph (A) throughout the final disposition  
4 of the action.

5 (e) BAR ON ASBESTOS CLAIMS.—

6 (1) IN GENERAL.—No asbestos claim (including  
7 any claim described in paragraph (2)) may be pur-  
8 sued, and no pending asbestos claim may be main-  
9 tained, in any Federal or State court, except as pro-  
10 vided under subsection (d)(2) and section 106(f) of  
11 this Act and section 524(j)(3) of title 11, United  
12 States Code, as amended by this Act.

13 (2) CERTAIN SPECIFIED CLAIMS.—

14 (A) IN GENERAL.—Subject to section 404  
15 (d) and (e)(3) of this Act, no claim may be  
16 brought or pursued in any Federal or State  
17 court or insurance receivership proceeding—

18 (i) relating to any default, confessed  
19 or stipulated judgment on an asbestos  
20 claim if the judgment debtor expressly  
21 agreed, in writing or otherwise, not to con-  
22 test the entry of judgment against it and  
23 the plaintiff expressly agreed, in writing or  
24 otherwise, to seek satisfaction of the judg-

1           ment only against insurers or in bank-  
2           ruptcy;

3           (ii) relating to the defense, investiga-  
4           tion, handling, litigation, settlement, or  
5           payment of any asbestos claim by any par-  
6           ticipant, including claims for bad faith or  
7           unfair or deceptive claims handling or  
8           breach of any duties of good faith; or

9           (iii) arising out of or relating to the  
10          asbestos-related injury of any individual  
11          and—

12               (I) asserting any conspiracy, con-  
13               cert of action, aiding or abetting, act,  
14               conduct, statement, misstatement, un-  
15               dertaking, publication, omission, or  
16               failure to detect, speak, disclose, pub-  
17               lish, or warn relating to the presence  
18               or health effects of asbestos or the  
19               use, sale, distribution, manufacture,  
20               production, development, inspection,  
21               advertising, marketing, or installation  
22               of asbestos; or

23               (II) asserting any conspiracy,  
24               act, conduct, statement, omission, or  
25               failure to detect, disclose, or warn re-

1           lating to the presence or health effects  
2           of asbestos or the use, sale, distribu-  
3           tion, manufacture, production, devel-  
4           opment, inspection, advertising, mar-  
5           keting, or installation of asbestos, as-  
6           serted as or in a direct action against  
7           an insurer or reinsurer based upon  
8           any theory, statutory, contract, tort,  
9           or otherwise; or

10           (iv) by any third party, and premised  
11           on any theory, allegation, or cause of ac-  
12           tion, for reimbursement of healthcare costs  
13           allegedly associated with the use of or ex-  
14           posure to asbestos, whether such claim is  
15           asserted directly, indirectly or derivatively.

16           (B) EXCEPTIONS.—Subparagraph (A) (ii)  
17           and (iii) shall not apply to claims against par-  
18           ticipants by persons—

19           (i) with whom the participant is in  
20           privity of contract;

21           (ii) who have received an assignment  
22           of insurance rights not otherwise voided by  
23           this Act; or

1 (iii) who are beneficiaries covered by  
2 the express terms of a contract with that  
3 participant.

4 (3) PREEMPTION.—Any action asserting an as-  
5 bestos claim (including a claim described in para-  
6 graph (2)) in any Federal or State court is pre-  
7 empted by this Act, except as provided under sub-  
8 section (d)(2) and section 106(f).

9 (4) DISMISSAL.—

10 (A) IN GENERAL.—Except as provided  
11 under subsection (d)(2), no judgment other  
12 than a judgment for dismissal may be entered  
13 in any action asserting an asbestos claim (in-  
14 cluding any claim described in paragraph (2))  
15 in any Federal or State court on or after the  
16 date of enactment of this Act.

17 (B) DISMISSAL ON MOTION.—A court may  
18 dismiss any action asserting an asbestos claim  
19 (including any claim described in paragraph  
20 (2)) on—

21 (i) motion by any party to such ac-  
22 tion; or

23 (ii) its own motion.

24 (C) DENIAL OF MOTION.—If a court de-  
25 nies a motion to dismiss under subparagraph

1 (B)(i), it shall stay further proceedings in any  
2 such action until final disposition of any appeal  
3 taken under this Act.

4 (D) EXCEPTION FOR PENDING CLAIMS IN  
5 COURT.—

6 (i) IN GENERAL.—Except as provided  
7 under subsection (d)(2) and clause (ii) of  
8 this subparagraph, an action asserting an  
9 asbestos claim that is pending on the date  
10 of enactment of this Act in any Federal or  
11 State court may not be dismissed under  
12 subparagraph (A), but any stay shall con-  
13 tinue in effect, if the plaintiff (or the per-  
14 sonal representative of the plaintiff, if the  
15 plaintiff is deceased or incompetent) in  
16 such action has filed a claim, or is still en-  
17 titled under section 113(b) to file a claim,  
18 with the Fund with respect to the disease,  
19 condition, or injury forming the basis of  
20 such action.

21 (ii) DISMISSAL ALLOWED IF CLAIM IS  
22 ADJUDICATED.—An action exempt from  
23 dismissal under clause (i) shall be dis-  
24 missed if—

1 (I) the plaintiff's claim under the  
2 Fund has been finally adjudicated,  
3 and—

4 (aa) the award, if any, to  
5 the plaintiff from the Fund has  
6 been paid in whole or in part; or

7 (bb) the plaintiff has been  
8 determined to be eligible for med-  
9 ical monitoring;

10 (II) the plaintiff's claim under  
11 the Fund has been finally adjudicated  
12 and the claimant is not entitled to re-  
13 ceive a monetary award or medical  
14 monitoring under subtitle D of title I;

15 (III) the plaintiff's claim has  
16 been resolved and paid in full under  
17 section 106(f);

18 (IV) after the Administrator cer-  
19 tifies to Congress that the Fund has  
20 become operational and paying all  
21 valid asbestos claims at a reasonable  
22 rate, the plaintiff's claim is pending in  
23 any venue other than a venue de-  
24 scribed under section 405(h)(3); or

1 (V) before the Administrator cer-  
2 tifies to Congress that the Fund has  
3 become operational and paying all  
4 valid asbestos claims at a reasonable  
5 rate, the plaintiff's claim—

6 (aa) is subject to section  
7 106(f)(3); and

8 (bb) would not be permitted  
9 to proceed in the venue in which  
10 that claim is pending under such  
11 paragraph.

12 (E) NOTICE.—A claimant shall provide no-  
13 tice to the Administrator of any pending action  
14 involving an asbestos claim in any Federal or  
15 State court in which such claimant is a plain-  
16 tiff. The Administrator shall send notice to the  
17 appropriate Federal or State court of any adju-  
18 dication of any claim with the Fund filed by a  
19 plaintiff in an action that has been stayed  
20 under subparagraph (D)(i).

21 (F) RULE OF CONSTRUCTION.—Nothing in  
22 this paragraph shall be construed to limit dis-  
23 missal, at any time, of a claim pending in Fed-  
24 eral or State court for reasons independent of  
25 the enactment of this Act.

1           (5) REMOVAL.—

2           (A) IN GENERAL.—If an action in any  
3           State court under paragraph (3) is preempted,  
4           barred, or otherwise precluded under this Act,  
5           and not dismissed, or if an order entered after  
6           the date of enactment of this Act purporting to  
7           enter judgment or deny review is not rescinded  
8           and replaced with an order of dismissal within  
9           30 days after the filing of a motion by any  
10          party to the action advising the court of the  
11          provisions of this Act, any party may remove  
12          the case to the district court of the United  
13          States for the district in which such action is  
14          pending.

15          (B) TIME LIMITS.—For actions originally  
16          filed after the date of enactment of this Act, the  
17          notice of removal shall be filed within the time  
18          limits specified in section 1441(b) of title 28,  
19          United States Code.

20          (C) PROCEDURES.—The procedures for re-  
21          moval and proceedings after removal shall be in  
22          accordance with sections 1446 through 1450 of  
23          title 28, United States Code, except as may be  
24          necessary to accommodate removal of any ac-



1           tions pending (including on appeal) on the date  
2           of enactment of this Act.

3           (D) REVIEW OF REMAND ORDERS.—

4           (i) IN GENERAL.—Section 1447 of  
5           title 28, United States Code, shall apply to  
6           any removal of a case under this section,  
7           except that notwithstanding subsection (d)  
8           of that section, a court of appeals may ac-  
9           cept an appeal from an order of a district  
10          court granting or denying a motion to re-  
11          mand an action to the State court from  
12          which it was removed if application is  
13          made to the court of appeals not less than  
14          7 days after entry of the order.

15          (ii) TIME PERIOD FOR JUDGMENT.—If  
16          the court of appeals accepts an appeal  
17          under clause (i), the court shall complete  
18          all action on such appeal, including ren-  
19          dering judgment, not later than 60 days  
20          after the date on which such appeal was  
21          filed, unless an extension is granted under  
22          clause (iii).

23          (iii) EXTENSION OF TIME PERIOD.—  
24          The court of appeals may grant an exten-

1           sion of the 60-day period described in  
2           clause (ii) if—

3                   (I) all parties to the proceeding  
4                   agree to such extension, for any pe-  
5                   riod of time; or

6                   (II) such extension is for good  
7                   cause shown and in the interests of  
8                   justice, for a period not to exceed 10  
9                   days.

10           (iv) DENIAL OF APPEAL.—If a final  
11           judgment on the appeal under clause (i) is  
12           not issued before the end of the period de-  
13           scribed in clause (ii), including any exten-  
14           sion under clause (iii), the appeal shall be  
15           denied.

16           (E) JURISDICTION.—The jurisdiction of  
17           the district court shall be limited to—

18                   (i) determining whether removal was  
19                   proper; and

20                   (ii) determining, based on the evi-  
21                   dentiary record, whether the claim pre-  
22                   sented is preempted, barred, or otherwise  
23                   precluded under this Act.

24           (6) CREDITS.—

1 (A) IN GENERAL.—If, notwithstanding the  
2 express intent of Congress stated in this sec-  
3 tion, any court finally determines for any rea-  
4 son that an asbestos claim, including a claim  
5 described under paragraph (2), is not barred  
6 under this subsection and is not subject to the  
7 exclusive remedy or preemption provisions of  
8 this section, then any participant required to  
9 satisfy a final judgment executed with respect  
10 to any such claim may elect to receive a credit  
11 against any assessment owed to the Fund equal  
12 to the amount of the payment made with re-  
13 spect to such executed judgment.

14 (B) REQUIREMENTS.—The Administrator  
15 shall require participants seeking credit under  
16 this paragraph to demonstrate that the partici-  
17 pant—

18 (i) timely pursued all available rem-  
19 edies, including remedies available under  
20 this paragraph to obtain dismissal of the  
21 claim; and

22 (ii) notified the Administrator at least  
23 20 days before the expiration of any period  
24 within which to appeal the denial of a mo-  
25 tion to dismiss based on this section.

1 (C) INFORMATION.—The Administrator  
 2 may require a participant seeking credit under  
 3 this paragraph to furnish such further informa-  
 4 tion as is necessary and appropriate to establish  
 5 eligibility for, and the amount of, the credit.

6 (D) INTERVENTION.—The Administrator  
 7 may intervene in any action in which a credit  
 8 may be due under this paragraph.

9 **SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CON-**  
 10 **TRACTS.**

11 (a) EROSION OF INSURANCE COVERAGE LIMITS.—

12 (1) DEFINITIONS.—In this section, the fol-  
 13 lowing definitions shall apply:

14 (A) DEEMED EROSION AMOUNT.—The  
 15 term “deemed erosion amount” means the  
 16 amount of erosion deemed to occur at enact-  
 17 ment under paragraph (2).

18 (B) EARLY SUNSET.—The term “early  
 19 sunset” means an event causing termination of  
 20 the program under section 405(g) which re-  
 21 lieves the insurer participants of paying some  
 22 portion of the aggregate payment level of  
 23 \$46,025,000,000 required under section  
 24 212(a)(2)(A).

1 (C) EARNED EROSION AMOUNT.—The  
 2 term “earned erosion amount” means, in the  
 3 event of any early sunset under section 405(g),  
 4 the percentage, as set forth in the following  
 5 schedule, depending on the year in which the  
 6 defendant participants’ funding obligations end,  
 7 of those amounts which, at the time of the early  
 8 sunset, a defendant participant has paid to the  
 9 fund and remains obligated to pay into the  
 10 fund.

<b>Year After Enactment In Which Defendant Participant’s Funding Obligation Ends:</b>	<b>Applicable Percentage:</b>
2 .....	67.06
3 .....	86.72
4 .....	96.55
5 .....	102.45
6 .....	90.12
7 .....	81.32
8 .....	74.71
9 .....	69.58
10 .....	65.47
11 .....	62.11
12 .....	59.31
13 .....	56.94
14 .....	54.90
15 .....	53.14
16 .....	51.60
17 .....	50.24
18 .....	49.03
19 .....	47.95
20 .....	46.98
21 .....	46.10
22 .....	45.30
23 .....	44.57
24 .....	43.90
25 .....	43.28
26 .....	42.71
27 .....	42.18
28 .....	40.82
29 .....	39.42

## (D) REMAINING AGGREGATE PRODUCTS

LIMITS.—The term “remaining aggregate products limits” means aggregate limits that apply to insurance coverage granted under the “products hazard”, “completed operations hazard”, or “Products—Completed Operations Liability” in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

## (E) SCHEDULED PAYMENT AMOUNTS.—

The term “scheduled payment amounts” means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

1 (F) UNEARNED EROSION AMOUNT.—The  
2 term “unearned erosion amount” means, in the  
3 event of any early sunset under section 405(g),  
4 the difference between the deemed erosion  
5 amount and the earned erosion amount.

6 (2) QUANTUM AND TIMING OF EROSION.—

7 (A) EROSION UPON ENACTMENT.—The  
8 collective payment obligations to the Fund of  
9 the insurer and reinsurer participants as as-  
10 sessed by the Administrator shall be deemed as  
11 of the date of enactment of this Act to erode re-  
12 maining aggregate products limits available to a  
13 defendant participant only in an amount of  
14 38.1 percent of each defendant participant’s  
15 scheduled payment amount.

16 (B) NO ASSERTION OF CLAIM.—No insurer  
17 or reinsurer may assert any claim against a de-  
18 fendant participant or captive insurer for insur-  
19 ance, reinsurance, payment of a deductible, or  
20 retrospective premium adjustment arising out  
21 of that insurer’s or reinsurer’s payments to the  
22 Fund or the erosion deemed to occur under this  
23 section.

24 (C) POLICIES WITHOUT CERTAIN LIMITS  
25 OR WITH EXCLUSION.—Except as provided

1 under subparagraph (E), nothing in this section  
2 shall require or permit the erosion of any insur-  
3 ance policy or limit that does not contain an ag-  
4 gregate products limit, or that contains an as-  
5 bestos exclusion.

6 (D) TREATMENT OF CONSOLIDATION  
7 ELECTION.—If an affiliated group elects con-  
8 solidation as provided in section 204(f), the  
9 total erosion of limits for the affiliated group  
10 under paragraph (2)(A) shall not exceed 38.1  
11 percent of the scheduled payment amount of  
12 the single payment obligation for the entire af-  
13 filiated group. The total erosion of limits for  
14 any individual defendant participant in the af-  
15 filiated group shall not exceed its individual  
16 share of 38.1 percent of the affiliated group's  
17 scheduled payment amount, as measured by the  
18 individual defendant participant's percentage  
19 share of the affiliated group's prior asbestos ex-  
20 penditures.

21 (E) RULE OF CONSTRUCTION.—Notwith-  
22 standing any other provision of this section,  
23 nothing in this Act shall be deemed to erode re-  
24 maining aggregate products limits of a defend-  
25 ant participant that can demonstrate by a pre-



ponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a “premises defendant”). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant’s products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by

1 policy period, in ascending order by attachment  
2 point.

3 (B) OTHER EROSION METHODS.—

4 (i) IN GENERAL.—Notwithstanding  
5 subparagraph (A), the method of erosion  
6 of any remaining aggregate products limits  
7 which are subject to—

8 (I) a coverage-in-place or settle-  
9 ment agreement between a defendant  
10 participant and 1 or more insurance  
11 participants as of the date of enact-  
12 ment; or

13 (II) a final and nonappealable  
14 judgment as of the date of enactment  
15 or resulting from a claim for coverage  
16 or reimbursement pending as of such  
17 date, shall be as specified in such  
18 agreement or judgment with regard to  
19 erosion applicable to such insurance  
20 participants' policies.

21 (ii) REMAINING LIMITS.—To the ex-  
22 tent that a final nonappealable judgment  
23 or settlement agreement to which an in-  
24 surer participant and a defendant partici-  
25 pant are parties in effect as of the date of

1 enactment of this Act extinguished a de-  
2 fendant participant's right to seek coverage  
3 for asbestos claims under an insurer par-  
4 ticipant's policies, any remaining limits in  
5 such policies shall not be considered to be  
6 remaining aggregate products limits under  
7 subsection (a)(1)(A).

8 (4) RESTORATION OF AGGREGATE PRODUCTS  
9 LIMITS UPON EARLY SUNSET.—

10 (A) RESTORATION.—In the event of an  
11 early sunset, any unearned erosion amount will  
12 be deemed restored as aggregate products limits  
13 available to a defendant participant as of the  
14 date of enactment.

15 (B) METHOD OF RESTORATION.—The un-  
16 earned erosion amount will be deemed restored  
17 to each defendant participant's policies in such  
18 a manner that the last limits that were deemed  
19 eroded at enactment under this subsection are  
20 deemed to be the first limits restored upon  
21 early sunset.

22 (C) TOLLING OF COVERAGE CLAIMS.—In  
23 the event of an early sunset, the applicable stat-  
24 ute of limitations and contractual provisions for  
25 the filing of claims under any insurance policy

1 with restored aggregate products limits shall be  
2 deemed tolled after the date of enactment  
3 through the date 6 months after the date of  
4 early sunset.

5 (5) PAYMENTS BY DEFENDANT PARTICIPANT.—

6 Payments made by a defendant participant shall be  
7 deemed to erode, exhaust, or otherwise satisfy appli-  
8 cable self-insured retentions, deductibles, retrospec-  
9 tively rated premiums, and limits issued by non-  
10 participating insolvent or captive insurance compa-  
11 nies. Reduction of remaining aggregate limits under  
12 this subsection shall not limit the right of a defend-  
13 ant participant to collect from any insurer not a par-  
14 ticipant.

15 (6) EFFECT ON OTHER INSURANCE CLAIMS.—

16 Other than as specified in this subsection, this Act  
17 does not alter, change, modify, or affect insurance  
18 for claims other than asbestos claims.

19 (b) DISPUTE RESOLUTION PROCEDURE.—

20 (1) ARBITRATION.—The parties to a dispute re-  
21 garding the erosion of insurance coverage limits  
22 under this section may agree in writing to settle  
23 such dispute by arbitration. Any such provision or  
24 agreement shall be valid, irrevocable, and enforce-

1       able, except for any grounds that exist at law or in  
2       equity for revocation of a contract.

3           (2) TITLE 9, UNITED STATES CODE.—Arbitra-  
4       tion of such disputes, awards by arbitrators, and  
5       confirmation of awards shall be governed by title 9,  
6       United States Code, to the extent such title is not  
7       inconsistent with this section. In any such arbitra-  
8       tion proceeding, the erosion principles provided for  
9       under this section shall be binding on the arbitrator,  
10      unless the parties agree to the contrary.

11          (3) FINAL AND BINDING AWARD.—An award by  
12      an arbitrator shall be final and binding between the  
13      parties to the arbitration, but shall have no force or  
14      effect on any other person. The parties to an arbi-  
15      tration may agree that in the event a policy which  
16      is the subject matter of an award is subsequently de-  
17      termined to be eroded in a manner different from  
18      the manner determined by the arbitration in a judg-  
19      ment rendered by a court of competent jurisdiction  
20      from which no appeal can or has been taken, such  
21      arbitration award may be modified by any court of  
22      competent jurisdiction upon application by any party  
23      to the arbitration. Any such modification shall gov-  
24      ern the rights and obligations between such parties  
25      after the date of such modification.

1 (c) EFFECT ON NONPARTICIPANTS.—

2 (1) IN GENERAL.—No insurance company or  
3 reinsurance company that is not a participant, other  
4 than a captive insurer, shall be entitled to claim that  
5 payments to the Fund erode, exhaust, or otherwise  
6 limit the nonparticipant's insurance or reinsurance  
7 obligations.

8 (2) OTHER CLAIMS.—Nothing in this Act shall  
9 preclude a participant from pursuing any claim for  
10 insurance or reinsurance from any person that is not  
11 a participant other than a captive insurer.

12 (d) FINITE RISK POLICIES NOT AFFECTED.—

13 (1) IN GENERAL.—Notwithstanding any other  
14 provision of this Act, except subject to section  
15 212(a)(1)(D), this Act shall not alter, affect or im-  
16 pair any rights or obligations of—

17 (A) any party to an insurance contract  
18 that expressly provides coverage for govern-  
19 mental charges or assessments imposed to re-  
20 place insurance or reinsurance liabilities in ef-  
21 fect on the date of enactment of this Act; or

22 (B) subject to paragraph (2), any person  
23 with respect to any insurance purchased by a  
24 participant after December 31, 1990, that ex-  
25 pressly (but not necessarily exclusively) provides

1 coverage for asbestos liabilities, including those  
2 policies commonly referred to as “finite risk”  
3 policies.

4 (2) LIMITATION.—No person may assert that  
5 any amounts paid to the Fund in accordance with  
6 this Act are covered by any policy described under  
7 paragraph (1)(B) purchased by a defendant partici-  
8 pant, unless such policy specifically provides cov-  
9 erage for required payments to a Federal trust fund  
10 established by a Federal statute to resolve asbestos  
11 injury claims.

12 (e) EFFECT ON CERTAIN INSURANCE AND REINSUR-  
13 ANCE CLAIMS.—

14 (1) NO COVERAGE FOR FUND ASSESSMENTS.—  
15 Subject to section 212(a)(1)(D), no participant or  
16 captive insurer may pursue an insurance or reinsur-  
17 ance claim against another participant or captive in-  
18 surer for payments to the Fund required under this  
19 Act, except under a written agreement specifically  
20 providing insurance, reinsurance, or other reim-  
21 bursement for required payments to a Federal trust  
22 fund established by a Federal statute to resolve as-  
23 bestos injury claims or, where applicable, under fi-  
24 nite risk policies under subsection (d).

1           (2) CERTAIN INSURANCE ASSIGNMENTS VOID-  
2       ED.—Any assignment of any rights to insurance cov-  
3       erage for asbestos claims to any person who has as-  
4       serted an asbestos claim before the date of enact-  
5       ment of this Act, or to any trust, person, or other  
6       entity not part of an affiliated group as defined in  
7       section 201(1) of this Act established or appointed  
8       for the purpose of paying asbestos claims which were  
9       asserted before such date of enactment, or by any  
10      Tier I defendant participant, before any sunset of  
11      this Act, shall be null and void. This subsection shall  
12      not void or affect in any way any assignments of  
13      rights to insurance coverage other than to asbestos  
14      claimants or to trusts, persons, or other entities not  
15      part of an affiliated group as defined in section  
16      201(1) of this Act established or appointed for the  
17      purpose of paying asbestos claims, or by Tier I de-  
18      fendant participants.

19           (3) INSURANCE CLAIMS PRESERVED.—Notwith-  
20      standing any other provision of this Act, this Act  
21      shall not alter, affect, or impair any rights or obliga-  
22      tions of any person with respect to any insurance or  
23      reinsurance for amounts that any person pays, has  
24      paid, or becomes legally obligated to pay in respect  
25      of asbestos or other claims, including claims filed,



1       pursued, or revived under section 405(h), except to  
2       the extent that—

3               (A) such claims are preempted, barred, or  
4       superseded by section 403;

5               (B) any such rights or obligations of such  
6       person with respect to insurance or reinsurance  
7       are prohibited by paragraph (1) or (2) of sub-  
8       section (e); or

9               (C) the limits of insurance otherwise avail-  
10      able to such participant in respect of asbestos  
11      claims are deemed to be eroded under sub-  
12      section (a).

13   **SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND**  
14               **SUNSET OF THE ACT.**

15       (a) IN GENERAL.—The Administrator shall submit  
16      an annual report to the Committee on the Judiciary of  
17      the Senate and the Committee on the Judiciary of the  
18      House of Representatives on the operation of the Asbestos  
19      Injury Claims Resolution Fund within 6 months after the  
20      close of each fiscal year.

21       (b) CONTENTS OF REPORT.—The annual report sub-  
22      mitted under this subsection shall include an analysis of—

23               (1) the claims experience of the program during  
24      the most recent fiscal year, including—

1 (A) the number of claims made to the Of-  
2 fice and a description of the types of medical  
3 diagnoses and asbestos exposures underlying  
4 those claims;

5 (B) the number of claims denied by the  
6 Office and a description of the types of medical  
7 diagnoses and asbestos exposures underlying  
8 those claims, and a general description of the  
9 reasons for their denial;

10 (C) a summary of the eligibility determina-  
11 tions made by the Office under section 114;

12 (D) a summary of the awards made from  
13 the Fund, including the amount of the awards;  
14 and

15 (E) for each disease level, a statement of  
16 the percentage of asbestos claimants who filed  
17 claims during the prior calendar year and were  
18 determined to be eligible to receive compensa-  
19 tion under this Act, who have received the com-  
20 pensation to which such claimants are entitled  
21 according to section 131;

22 (2) the administrative performance of the pro-  
23 gram, including—

24 (A) the performance of the program in  
25 meeting the time limits prescribed by law and

1 an analysis of the reasons for any systemic  
2 delays;

3 (B) any backlogs of claims that may exist  
4 and an explanation of the reasons for such  
5 backlogs;

6 (C) the costs to the Fund of administering  
7 the program; and

8 (D) any other significant factors bearing  
9 on the efficiency of the program;

10 (3) the financial condition of the Fund, includ-  
11 ing—

12 (A) statements of the Fund's revenues, ex-  
13 penses, assets, and liabilities;

14 (B) the identity of all participants, the  
15 funding allocations of each participant, and the  
16 total amounts of all payments to the Fund;

17 (C) a list of all financial hardship or in-  
18 equity adjustments applied for during the fiscal  
19 year, and the adjustments that were made dur-  
20 ing the fiscal year;

21 (D) a statement of the investments of the  
22 Fund; and

23 (E) a statement of the borrowings of the  
24 Fund;

1           (4) the financial prospects of the Fund, includ-  
2     ing—

3           (A) an estimate of the number and types  
4           of claims, the amount of awards, and the par-  
5           ticipant payment obligations for the next fiscal  
6           year;

7           (B) an analysis of the financial condition  
8           of the Fund, including an estimation of the  
9           Fund's ability to pay claims for the subsequent  
10          5 years in full and over the predicted lifetime  
11          of the program as and when required, an eval-  
12          uation of the Fund's ability to retire its existing  
13          debt and assume additional debt, and an eval-  
14          uation of the Fund's ability to satisfy other ob-  
15          ligations under the program; and

16          (C) a report on any changes in projections  
17          made in earlier annual reports or sunset anal-  
18          yses regarding the Fund's ability to meet its fi-  
19          nancial obligations;

20          (5) a summary of any legal actions brought or  
21          penalties imposed under section 223, any referrals  
22          made to law enforcement authorities under section  
23          408 (a) and (b), and any contributions to the Fund  
24          collected under section 408(e);

1           (6) any recommendations from the Advisory  
2       Committee on Asbestos Disease Compensation and  
3       the Medical Advisory Committee of the Fund to im-  
4       prove the diagnostic, exposure, and medical criteria  
5       so as to pay those claimants who suffer from dis-  
6       eases or conditions for which exposure to asbestos  
7       was a substantial contributing factor;

8           (7) a summary of the results of audits con-  
9       ducted under section 115; and

10          (8) a summary of prosecutions under section  
11       1348 of title 18, United States Code (as added by  
12       this Act).

13       (c) CERTIFICATION.—The Administrator shall certify  
14   in the annual report required under subsection (a) wheth-  
15   er, in the best judgment of the Administrator, the Fund  
16   will have sufficient resources for the fiscal year in which  
17   the report is issued to make all required payments—

18          (1) with respect to all claims determined eligible  
19       for compensation that have been filed and that the  
20       Administrator projects will be filed with the Office  
21       for the fiscal year; and

22          (2) to satisfy the Fund's debt repayment obliga-  
23       tion, administrative costs, and other financial obliga-  
24       tions.

1 (d) CLAIMS ANALYSIS AND VERIFICATION OF UNAN-  
2 TICIPATED CLAIMS.—

3 (1) IN GENERAL.—If the Administrator con-  
4 cludes, on the basis of the annual report submitted  
5 under this section, that—

6 (A) the average number of claims that  
7 qualify for compensation under a claim level or  
8 designation exceeds 125 percent of the number  
9 of claims expected to qualify for compensation  
10 under that claim level or designation in the  
11 most recent Congressional Budget Office esti-  
12 mate of asbestos-injury claims for any 3-year  
13 period, the Administrator shall conduct a review  
14 of a statistically significant sample of claims  
15 qualifying for compensation under the appro-  
16 priate claim level or designation; or

17 (B) the average number of claims that  
18 qualify for compensation under a claim level or  
19 designation is less than 75 percent of the num-  
20 ber of claims expected to qualify for compensa-  
21 tion under that claim level or designation in the  
22 most recent Congressional Budget Office esti-  
23 mate of asbestos-injury claims for any 3-year  
24 period, the Administrator shall conduct a review  
25 of a statistically significant sample of claims

1           deemed ineligible for compensation under the  
2           appropriate claim level or designation.

3           (2) DETERMINATIONS.—The Administrator  
4           shall examine the best available medical evidence  
5           and any recommendation made under subsection  
6           (b)(5) in order to determine which 1 or more of the  
7           following is true:

8                   (A) Without a significant number of excep-  
9                   tions, all of the claimants who qualified for  
10                  compensation under the claim level or designa-  
11                  tion suffer from an injury or disease for which  
12                  exposure to asbestos was a substantial contrib-  
13                  uting factor.

14                  (B) A significant number of claimants who  
15                  qualified for compensation under the claim level  
16                  or designation do not suffer from an injury or  
17                  disease for which exposure to asbestos was a  
18                  substantial contributing factor.

19                  (C) A significant number of claimants who  
20                  were denied compensation under the claim level  
21                  of designation did suffer from an injury or dis-  
22                  ease for which exposure to asbestos was a sub-  
23                  stantial contributing factor.

24                  (D) The Congressional Budget Office pro-  
25                  jections underestimated or overestimated the

1           actual number of persons who suffer from an  
2           injury or disease for which exposure to asbestos  
3           was a substantial contributing factor.

4           (3) RECOMMENDATIONS CONCERNING CLAIMS  
5           CRITERIA.—If the Administrator determines that a  
6           significant number of the claimants who qualified for  
7           compensation under the claim level under review do  
8           not suffer from an injury or disease for which expo-  
9           sure to asbestos was a substantial contributing fac-  
10          tor, or that a significant number of the claimants  
11          who were denied compensation under the claim level  
12          under review suffered from an injury or disease for  
13          which exposure to asbestos was a substantial con-  
14          tributing factor, the Administrator shall recommend  
15          to Congress, under subsection (f), changes to the  
16          compensation criteria in order to ensure that the  
17          Fund provides compensation for injury or disease for  
18          which exposure to asbestos was a substantial con-  
19          tributing factor, but does not provide compensation  
20          to claimants who do not suffer from an injury or  
21          disease for which asbestos exposure was a substan-  
22          tial contributing factor.

23          (e) RECOMMENDATIONS OF ADMINISTRATOR AND  
24          ADVISORY COMMITTEE.—



1           (1) REFERRAL.—If the Administrator rec-  
 2           ommends changes to this Act under subsection (d),  
 3           the recommendations and accompanying analysis  
 4           shall be referred to the Advisory Committee on As-  
 5           bestos Disease Compensation established under sec-  
 6           tion 102 (in this subsection referred to as the “Advi-  
 7           sory Committee”).

8           (2) ADVISORY COMMITTEE RECOMMENDA-  
 9           TIONS.—The Advisory Committee shall hold exped-  
 10          dited public hearings on the alternatives and rec-  
 11          ommendations of the Administrator and make its  
 12          own recommendations for reform of the program  
 13          under titles I and II.

14          (3) TRANSMITTAL TO CONGRESS.—Not later  
 15          than 90 days after receiving the recommendations of  
 16          the Administrator, the Advisory Committee shall  
 17          transmit the recommendations of the Administrator  
 18          and the recommendations of the Advisory Committee  
 19          to the Committee on the Judiciary of the Senate and  
 20          the Committee on the Judiciary of the House of  
 21          Representatives.

22          (f) SHORTFALL ANALYSIS.—

23               (1) IN GENERAL.—

24                       (A) ANALYSIS.—If the Administrator con-  
 25                       cludes, at any time, that the Fund may not be

1       able to pay claims as such claims become due  
2       at any time within the next 5 years and to sat-  
3       isfy its other obligations, the Administrator  
4       shall prepare an analysis of the reasons for the  
5       situation, an estimation of when the Fund will  
6       no longer be able to pay claims as such claims  
7       become due, a description of the range of rea-  
8       sonable alternatives for responding to the situa-  
9       tion, and a recommendation as to which alter-  
10      native best serves the interest of claimants and  
11      the public. The report may include a description  
12      of changes in the diagnostic, exposure, or med-  
13      ical criteria of section 121 that the Adminis-  
14      trator believes may be necessary to protect the  
15      Fund. The Administrator shall submit such  
16      analysis to the Committee on the Judiciary of  
17      the Senate and the Committee on the Judiciary  
18      of the House of Representatives. Any rec-  
19      ommendations made by the Administrator for  
20      changes to the program shall, in addition, be  
21      referred to the Advisory Committee on Asbestos  
22      Disease Compensation established under section  
23      102 for review.

1 (B) RANGE OF ALTERNATIVES.—The  
2 range of alternatives under subparagraph (A)  
3 may include—

4 (i) termination of the program set  
5 forth in titles I and II of this Act in its en-  
6 tirety;

7 (ii) reform of the program set forth in  
8 titles I and II of this Act (including  
9 changes in the diagnostic, exposure, or  
10 medical criteria, changes in the enforce-  
11 ment or application of those criteria, en-  
12 hancement of enforcement authority,  
13 changes in the timing of payments,  
14 changes in contributions by defendant par-  
15 ticipants, insurer participants (or both  
16 such participants), or changes in award  
17 values); or

18 (iii) any measure that the Adminis-  
19 trator considers appropriate.

20 (C) INSURER SHORTFALL ASSESSMENTS.—  
21 Beginning in year 6 of the life of the Fund, if  
22 the Administrator determines that a shortfall in  
23 payment of the annual amounts required to be  
24 paid by insurer participants under section  
25 212(a)(3)(C) is the substantial factor that

1 would cause the Administrator to recommend  
2 the termination of this Act under subsection  
3 (g), then the Administrator may impose short-  
4 fall assessments on insurer participants in addi-  
5 tion to the payments imposed under section  
6 212, except that the Administrator shall not  
7 impose such assessments if the additional  
8 amounts would not be sufficient to permit the  
9 Administrator to avoid recommending termi-  
10 nation of this Act. During any given year, the  
11 total of such shortfall assessments shall not ex-  
12 ceed the amount by which, during the prior  
13 year, total payments by insurer participants fell  
14 short of the aggregate amounts required to be  
15 paid under section 212(a)(3)(C). Shortfall as-  
16 sessments shall be allocated among insurer par-  
17 ticipants using the methodology adopted by the  
18 Asbestos Insurers Commission under section  
19 212(a)(1)(B).

20 (2) CONSIDERATIONS.—In formulating rec-  
21 ommendations, the Administrator shall take into ac-  
22 count the reasons for any shortfall, actual or pro-  
23 jected, which may include—

24 (A) financial factors, including return on  
25 investments, borrowing capacity, interest rates,

1 ability to collect contributions, and other rel-  
2 evant factors;

3 (B) the operation of the Fund generally,  
4 including administration of the claims proc-  
5 essing, the ability of the Administrator to col-  
6 lect contributions from participants, potential  
7 problems of fraud, the adequacy of the criteria  
8 to rule out idiopathic mesothelioma, and inad-  
9 equate flexibility to extend the timing of pay-  
10 ments;

11 (C) the appropriateness of the diagnostic,  
12 exposure, and medical criteria, including the  
13 adequacy of the criteria to rule out idiopathic  
14 mesothelioma;

15 (D) the actual incidence of asbestos-related  
16 diseases, including mesothelioma, based on epi-  
17 demiological studies and other relevant data;

18 (E) compensation of diseases with alter-  
19 native causes; and

20 (F) other factors that the Administrator  
21 considers relevant.

22 (3) RECOMMENDATION OF TERMINATION.—Any  
23 recommendation of termination should include a  
24 plan for winding up the affairs of the Fund (and the  
25 program generally) within a defined period, includ-

1       ing paying in full all claims resolved at the time the  
2       report is prepared. Any plan under this paragraph  
3       shall provide for priority in payment to the claim-  
4       ants with the most serious illnesses.

5           (4) RESOLVED CLAIMS.—For purposes of this  
6       section, a claim shall be deemed resolved when the  
7       Administrator has determined the amount of the  
8       award due the claimant, and either the claimant has  
9       waived judicial review or the time for judicial review  
10      has expired.

11      (g) SUNSET OF ACT.—

12           (1) IN GENERAL.—

13           (A) TERMINATION.—Subject to paragraph  
14       (4), titles I (except subtitle A) and II and sec-  
15       tions 403 and 404(e)(2) shall terminate as pro-  
16       vided under paragraph (2), if—

17           (i) the Administrator has begun the  
18       processing of claims; and

19           (ii) as part of the review conducted to  
20       prepare an annual report under this sec-  
21       tion, the Chief Financial Officer of the De-  
22       partment of Labor, giving due consider-  
23       ation to the audit conducted under sub-  
24       section (h), determines that if any addi-  
25       tional claims are resolved, the Fund will

1 not have sufficient nontaxpayer resources  
 2 and borrowing authorized under section  
 3 221 when needed to pay 100 percent of all  
 4 resolved claims while also meeting all other  
 5 obligations of the Fund under this Act, in-  
 6 cluding the payment of—

- 7 (I) debt repayment obligations;  
 8 and  
 9 (II) remaining obligations to the  
 10 asbestos trust of a debtor and the  
 11 class action trust.

12 (B) REMAINING OBLIGATIONS.—For pur-  
 13 poses of subparagraph (A)(ii)(II), the remain-  
 14 ing obligations to the asbestos trust of the debt-  
 15 or and the class action trust shall be deter-  
 16 mined by multiplying the amount of assets  
 17 transferred to the Fund by such debtor or class  
 18 action trust by the applicable percentage set  
 19 forth in the following schedule depending on the  
 20 year in which a termination shall take effect  
 21 under paragraph (2). The applicable percentage  
 22 shall be adjusted between years by quarter-an-  
 23 nual increments.

<b>Year After Enactment in Which the Termination is Effective</b>	<b>Applicable Percentage:</b>
1 .....	100.00
2 .....	93.95
3 .....	87.98

<b>Year After Enactment in Which the Termination is Effective</b>	<b>Applicable Percentage:</b>
4 .....	82.40
5 .....	76.97
6 .....	71.66
7 .....	66.50
8 .....	61.48
9 .....	56.61
10 .....	52.01
11 .....	47.65
12 .....	43.52
13 .....	39.62
14 .....	35.96
15 .....	32.55
16 .....	29.36
17 .....	26.39
18 .....	23.65
19 .....	21.11
20 .....	18.76
21 .....	16.62
22 .....	14.66
23 .....	12.86
24 .....	11.24
25 .....	9.78
26 .....	8.48
27 .....	7.32
28 .....	6.29
29 .....	5.37
30 .....	4.55
31 .....	3.83
32 .....	3.20
33 .....	2.66
34 .....	2.18
35 .....	1.77
36 .....	1.42
37 .....	1.13
38 .....	0.89
39 .....	0.70
40 .....	0.54
41 .....	0.40
42 .....	0.29
43 .....	0.19
44 .....	0.12
45 .....	0.05
46 and thereafter .....	0.00

1           (2) EFFECTIVE DATE OF TERMINATION.—A  
2       termination under paragraph (1) shall take effect  
3       180 days after the date of a determination of the  
4       Administrator under paragraph (1) and shall apply



1 to all asbestos claims that have not been resolved by  
2 the Fund as of the date of the determination.

3 (3) RESOLVED CLAIMS.—If a termination takes  
4 effect under this subsection, all resolved claims shall  
5 be paid in full by the Fund.

6 (4) EXTINGUISHED CLAIMS.—A claim that is  
7 extinguished under the statute of limitations provi-  
8 sions in section 113(b) is not revived at the time of  
9 sunset under this subsection.

10 (5) CONTINUED FUNDING.—If a termination  
11 takes effect under this subsection, participants will  
12 still be required to make payments as provided  
13 under subtitles A and B of title II. If the full  
14 amount of payments required by title II is not nec-  
15 essary for the Fund to pay claims that have been re-  
16 solved as of the date of termination, pay the Fund's  
17 debt and obligations to the asbestos trusts and class  
18 action trust, and support the Fund's continued oper-  
19 ation as needed to pay such claims, debt, and obliga-  
20 tions, the Administrator may reduce such payments.  
21 Any such reductions shall be allocated among par-  
22 ticipants in approximately the same proportion as  
23 the liability under subtitles A and B of title II.

24 (6) SUNSET CLAIMS.—

25 (A) DEFINITIONS.—In this paragraph—

1 (i) the term “sunset claims” means  
 2 claims filed with the Fund, but not yet re-  
 3 solved, when this Act has terminated; and

4 (ii) the term “sunset claimants”  
 5 means persons asserting sunset claims.

6 (B) IN GENERAL.—If a termination takes  
 7 effect under this subsection, the applicable stat-  
 8 ute of limitations for the filing of sunset claims  
 9 under subsection (h) shall be tolled for any past  
 10 or pending sunset claimants while such claim-  
 11 ants were pursuing claims filed under this Act.  
 12 For those claimants who decide to pursue a  
 13 sunset claim in accordance with subsection (h),  
 14 the applicable statute of limitations shall apply,  
 15 except that claimants who filed a claim against  
 16 the Fund under this Act before the date of ter-  
 17 mination shall have 2 years after the date of  
 18 termination to file a sunset claim in accordance  
 19 with subsection (h).

20 (7) ESTABLISHMENT OF MASTER ASBESTOS  
 21 TRUST.—

22 (A) CREATION.—Within 120 days after the  
 23 determination of the Administrator under para-  
 24 graph (1), the Administrator shall create a  
 25 trust to be the successor to the asbestos trusts

1 and any class action trust, to receive funds  
2 equal to the amount determined by the Admin-  
3 istrator to be necessary to pay the remaining  
4 aggregate obligations to the asbestos trusts and  
5 any class action trust under paragraph (1)  
6 (A)(iii) and (B), and to use such funds for the  
7 exclusive purpose of providing benefits in ac-  
8 cordance with the terms of this paragraph to  
9 persons who would have held valid asbestos  
10 claims against the asbestos trusts or any class  
11 action trust had this Act not been enacted and  
12 to otherwise defray the reasonable expenses of  
13 administering the master trust.

14 (B) JURISDICTION.—The United States  
15 District Court for the District of Columbia shall  
16 have exclusive jurisdiction, without regard to  
17 amount in controversy, over the master trust  
18 and all civil actions involving the application  
19 and construction of this subparagraph and the  
20 trust documents, including any action for the  
21 payment of benefits due under the terms of this  
22 subparagraph after exhaustion of trust rem-  
23 edies and any action for breach of fiduciary  
24 duty on the part of any fiduciary of the master  
25 trust.

1           (C) TRUSTEES.—The district court shall  
2           appoint, upon petition by the Administrator  
3           after consultation with the Advisory Committee,  
4           3 trustees to administer the master trust. Each  
5           trustee, and any successor to each trustee, must  
6           be independent, free of any adverse interest and  
7           have sufficient qualifications and experience to  
8           fulfill the responsibilities described in this sec-  
9           tion.

10          (D) TRUST ADVISORY COMMITTEE.—The  
11          Administrator, in consultation with the Advi-  
12          sory Committee, shall appoint 3 persons to rep-  
13          resent the interests of trust beneficiaries as  
14          members of a trust advisory committee to con-  
15          sult with and advise the trustees respecting the  
16          administration of the master trust and resolu-  
17          tion of asbestos claims. At least 1 of the mem-  
18          bers of the trust advisory committee shall be se-  
19          lected from among individuals recommended by  
20          recognized national labor federations, and at  
21          least 1 of the members of the trust advisory  
22          committee shall be experienced in representing  
23          the interests of trust beneficiaries.

24          (E) LEGAL REPRESENTATIVE.—The dis-  
25          trict court shall appoint, upon petition by the

1 Administrator after consultation with the Advi-  
2 sory Committee, a legal representative of per-  
3 sons who may in the future have claims against  
4 the master trust for the purpose of protecting  
5 the rights of such persons respecting the master  
6 trust and consulting with and advising the  
7 trustees respecting the administration of the  
8 master trust and resolution of asbestos claims.  
9 The legal representative shall have standing to  
10 appear and be heard as a representative of the  
11 future asbestos claimants in any civil action be-  
12 fore the district court relating to the master  
13 trust. The legal representative shall not rep-  
14 resent the interests of any person who has filed  
15 a claim for benefits against the master trust  
16 with respect to such claim.

17 (F) TRUST DOCUMENTS.—The Adminis-  
18 trator, in consultation with the Advisory Com-  
19 mittee, shall create such trust documents as  
20 may be necessary to create and govern the op-  
21 erations of the master trust. The trust docu-  
22 ments shall contain provisions that—

23 (i) address the payment of compensa-  
24 tion to and reimbursement of necessary  
25 and reasonable expenses of the trustees,

1 trust advisory committee members and  
2 legal representative, and appointment of  
3 successors to such persons, subject to ap-  
4 proval by the district court in the case of  
5 successors to the trustees and legal rep-  
6 resentative; and

7 (ii) provide for the master trust's obli-  
8 gation to defend and indemnify the Admin-  
9 istrator, trustees, members of the trust ad-  
10 visory committee, legal representative and  
11 their respective successors against and  
12 from legal actions and related losses to the  
13 extent that a corporation is permitted  
14 under the laws of Delaware to defend and  
15 indemnify its officers and directors.

16 (G) DUTY OF TRUSTEES.—The trustees  
17 shall administer the master trust in accordance  
18 with the terms of this subparagraph and the  
19 Trust Documents for the exclusive purpose of  
20 providing benefits to persons with valid claims  
21 against the master trust and otherwise defray-  
22 ing the reasonable expenses of administering  
23 the master trust, and shall manage and invest  
24 the assets of the trust with the care, skill, pru-  
25 dence, and diligence, under like circumstances

1 prevailing at the time, that a prudent person  
2 acting in like capacity and manner would use.

3 (H) CLAIMS RESOLUTION PROCEDURES.—

4 The trustees, in consultation with the trust ad-  
5 visory committee and the legal representative,  
6 shall adopt claims resolution procedures that  
7 provide for fair and expeditious payment of  
8 benefits to all persons described in subpara-  
9 graph (A). The claims resolution procedures  
10 adopted and implemented by the trustees shall  
11 contain—

12 (i) pro rata distributions of award  
13 amounts that are subject to adjustment, if  
14 necessary, based on periodic evaluations of  
15 the value of the master trust's assets and  
16 estimates of the numbers and values of  
17 present and future asbestos claims for ben-  
18 efits that may be awarded by the master  
19 trust and other mechanisms that provide  
20 reasonable assurance that the master trust  
21 will value, and be in a financial position to  
22 pay, similarly situated asbestos claims pre-  
23 sented to it that involve similar diseases in  
24 substantially the same manner;

1           (ii) proof requirements, claim submis-  
2           sion procedures, and claim evaluation and  
3           allowance procedures that provide for expe-  
4           ditious filing and evaluation of all asbestos  
5           claims submitted to the master trust;

6           (iii) provisions for priority review and  
7           payment of claimants whose circumstances  
8           require expedited evaluation and com-  
9           pensation;

10          (iv) exposure requirements for asbes-  
11          tos claimants to qualify for a remedy that  
12          fairly reflect the legal responsibility of at  
13          least 1 entity whose liabilities were chan-  
14          neled to an asbestos trust or any class ac-  
15          tion trust; and

16          (v) review and dispute resolution pro-  
17          cedures for disputes regarding the master  
18          trust's disallowance or other treatment of  
19          claims for benefits.

20          (I) MEDICAL CRITERIA.—The trustees, in  
21          consultation with the trust advisory committee  
22          and the legal representative, shall adopt and  
23          maintain uniform medical criteria that fairly re-  
24          flect a current state of applicable law and sci-



1           entific and medical knowledge. The trustees  
2           may adopt the medical criteria of section 121.

3           (J) AWARD AMOUNTS.—The trustees, in  
4           consultation with the trust advisory committee  
5           and the legal representative, shall adopt a ma-  
6           trix of award amounts for disease categories  
7           that applies to all claimants who qualify for  
8           payment under the medical criteria and claims  
9           resolution procedures. The trustees may adopt  
10          the matrix of award amounts of section 131 or  
11          such other matrix that the trustees determine  
12          provides similar benefits for similar claims and  
13          fairly reflects the liability of the entities whose  
14          liabilities were channeled to the asbestos trusts  
15          and any class action trust.

16          (K) PAYMENTS TO CLAIMANTS.—The  
17          trustees shall pay each qualifying claimant a  
18          benefit equal to the product of the master trust  
19          payment percentage and the award amount to  
20          such claimant. The master trust payment per-  
21          centage at any given time shall be determined  
22          by the trustees based on their periodic evalua-  
23          tion of the master trust's assets and projected  
24          claims as described in subparagraph (H)(i).

1           (L) AMENDMENTS.—The trustees, in con-  
2           sultation with the trust advisory committee and  
3           legal representative, may amend the trust docu-  
4           ments, the claims resolution procedures, the  
5           medical criteria and the award matrix to the ex-  
6           tent necessary to more effectively and efficiently  
7           carry out the purpose of the master trust. If  
8           the substantive consolidation of the asbestos  
9           trusts and any class action trust effected by  
10          this subsection is held to be unconstitutional,  
11          the trustees shall adopt amendments to the  
12          trust documents, claims resolution procedures,  
13          medical criteria and award matrix as may be  
14          necessary to bring the master trust in compli-  
15          ance with the Constitution, including if nec-  
16          essary, amendments requiring, for each such  
17          trust, separate claims resolution procedures,  
18          award amounts and accounting of assets and li-  
19          abilities.

20          (8) PAYMENT TO MASTER TRUST.—The amount  
21          determined by the Administrator to be necessary to  
22          pay the remaining aggregate obligations to the as-  
23          bestos trusts and any class action trust under para-  
24          graph (1) (A)(iii) and (B) shall be transferred to the  
25          master trust within 90 days of termination under

1       this subsection. Any individual with a valid asbestos  
2       claim against any asbestos trust or class action trust  
3       shall be entitled to seek relief on account of such  
4       claim from the master trust described in paragraph  
5       (7) in accordance with that paragraph.

6       (h) NATURE OF CLAIM AFTER SUNSET.—

7               (1) IN GENERAL.—

8                       (A) RELIEF.—

9                               (i) IN GENERAL.—On and after the  
10                              date of termination under subsection (g),  
11                              any individual with an asbestos claim who  
12                              has not previously had a claim resolved by  
13                              the Fund, may in a civil action obtain re-  
14                              lief in damages subject to the terms and  
15                              conditions under this subsection and para-  
16                              graph (6) of subsection (g), except that  
17                              any individual who would have held a valid  
18                              asbestos claim against any asbestos trust  
19                              or class action trust had this Act not been  
20                              enacted may obtain relief on account of  
21                              such claim only from the master trust de-  
22                              scribed in subsection (g)(7) in accordance  
23                              with the provisions of such subsection.

1 (ii) RULE OF CONSTRUCTION.—This  
2 subparagraph shall not be construed as  
3 creating a new Federal cause of action.

4 (B) RESOLVED CLAIMS.—An individual  
5 who has had a claim resolved by the Fund may  
6 not pursue a court action, except that an indi-  
7 vidual who received an award for a nonmalignant  
8 disease (Levels I through V) from the  
9 Fund may assert a claim for a subsequent or  
10 progressive disease under this subsection, unless  
11 the disease was diagnosed or the claimant had  
12 discovered facts that would have led a reason-  
13 able person to obtain such a diagnosis before  
14 the date on which the previous claim against  
15 the Fund was disposed.

16 (C) MESOTHELIOMA CLAIM.—An indi-  
17 vidual who received an award for a nonmalignant  
18 or malignant disease (except mesothe-  
19 lioma) (Levels I through VIII) from the Fund  
20 may assert a claim for mesothelioma under this  
21 subsection, unless the mesothelioma was diag-  
22 nosed or the claimant had discovered facts that  
23 would have led a reasonable person to obtain  
24 such a diagnosis before the date on which the

1 nonmalignant or other malignant claim was dis-  
2 posed.

3 (2) EXCLUSIVE REMEDY.—As of the effective  
4 date of a termination of this Act under subsection  
5 (g), an action under paragraph (1) shall be the ex-  
6 clusive remedy for any asbestos claim that might  
7 otherwise exist under Federal, State, or other law,  
8 regardless of whether such claim arose before or  
9 after the date of enactment of this Act or of the ter-  
10 mination of this Act, except that claims against the  
11 Fund that have been resolved before the date of the  
12 termination determination under subsection (f) may  
13 be paid by the Fund.

14 (3) VENUE.—

15 (A) IN GENERAL.—Actions under para-  
16 graph (1) may be brought in—

- 17 (i) any Federal district court;  
18 (ii) any State court in the State where  
19 the claimant resides; or  
20 (iii) any State court in a State where  
21 the asbestos exposure occurred.

22 (B) DEFENDANTS NOT FOUND.—If any  
23 defendant cannot be found in the State de-  
24 scribed in clause (ii) or (iii) of subparagraph  
25 (A), the claim may be pursued only against that

1 defendant in the Federal district court or the  
2 State court located within any State in which  
3 the defendant may be found.

4 (C) DETERMINATION OF MOST APPRO-  
5 PRIATE FORUM.—If a person alleges that the  
6 asbestos exposure occurred in more than 1  
7 county (or Federal district), the trial court shall  
8 determine which State and county (or Federal  
9 district) is the most appropriate forum for the  
10 claim. If the court determines that another  
11 forum would be the most appropriate forum for  
12 a claim, the court shall dismiss the claim. Any  
13 otherwise applicable statute of limitations shall  
14 be tolled beginning on the date the claim was  
15 filed and ending on the date the claim is dis-  
16 missed under this subparagraph.

17 (D) STATE VENUE REQUIREMENTS.—  
18 Nothing in this paragraph shall preempt or su-  
19 persede any State’s law relating to venue re-  
20 quirements within that State which are more  
21 restrictive.

22 (4) CLASS ACTION TRUSTS.—Notwithstanding  
23 any other provision of this section, after the assets  
24 of any class action trust have been transferred to  
25 the Fund in accordance with section 203(b)(5), no

1 asbestos claim may be maintained with respect to  
2 asbestos liabilities arising from the operations of a  
3 person with respect to whose liabilities for asbestos  
4 claims a class action trust has been established,  
5 whether such claim names the person or its succes-  
6 sors or affiliates as defendants.

7 (5) EXPERT WITNESSES.—If scientific, tech-  
8 nical, or other specialized knowledge will assist the  
9 trier of fact to understand the evidence or to deter-  
10 mine a fact in issue in an action permitted under  
11 paragraph (1), a witness qualified as an expert by  
12 knowledge, skill, experience, training, or education,  
13 may testify thereto in the form of an opinion or oth-  
14 erwise, if—

15 (A) the testimony is based upon sufficient  
16 facts or data;

17 (B) the testimony is the product of reliable  
18 principles and methods; and

19 (C) the witness has applied the principles  
20 and methods reliably to the facts of the case.

21 (i) AUDIT.—Any annual report to Congress required  
22 under this section shall be reviewed and certified as fairly  
23 representing the financial condition of the Fund by an  
24 independent auditor.

1 **SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABIL-**  
2 **ITY OF THE UNITED STATES GOVERNMENT.**

3 (a) CAUSES OF ACTIONS.—Except as otherwise spe-  
4 cifically provided in this Act, nothing in this Act shall be  
5 construed as creating a cause of action against the United  
6 States Government, any entity established under this Act,  
7 or any officer or employee of the United States Govern-  
8 ment or such entity.

9 (b) FUNDING LIABILITY.—Nothing in this Act shall  
10 be construed to—

11 (1) create any obligation of funding from the  
12 United States Government, including any borrowing  
13 authorized under section 221(b)(2); or

14 (2) obligate the United States Government to  
15 pay any award or part of an award, if amounts in  
16 the Fund are inadequate.

17 **SEC. 407. RULES OF CONSTRUCTION.**

18 (a) LIBBY, MONTANA CLAIMANTS.—Nothing in this  
19 Act shall preclude the formation of a fund for the payment  
20 of eligible medical expenses related to treating asbestos-  
21 related disease for current and former residents of Libby,  
22 Montana. The payment of any such medical expenses shall  
23 not be collateral source compensation as defined under  
24 section 134(a).

25 (b) HEALTHCARE FROM PROVIDER OF CHOICE.—  
26 Nothing in this Act shall be construed to preclude any eli-



1 gible claimant from receiving healthcare from the provider  
2 of their choice.

3 **SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND**  
4 **SAFETY REQUIREMENTS.**

5 (a) ASBESTOS IN COMMERCE.—If the Administrator  
6 receives information concerning conduct occurring after  
7 the date of enactment of this Act that may have been a  
8 violation of standards issued by the Environmental Protec-  
9 tion Agency under the Toxic Substances Control Act (15  
10 U.S.C. 2601 et seq.), relating to the manufacture, impor-  
11 tation, processing, disposal, and distribution in commerce  
12 of asbestos-containing products, the Administrator shall  
13 refer the matter in writing within 30 days after receiving  
14 that information to the Administrator of the Environ-  
15 mental Protection Agency and the United States attorney  
16 for possible civil or criminal penalties, including those  
17 under section 17 of the Toxic Substances Control Act (15  
18 U.S.C. 2616), and to the appropriate State authority with  
19 jurisdiction to investigate asbestos matters.

20 (b) ASBESTOS AS AIR POLLUTANT.—If the Adminis-  
21 trator receives information concerning conduct occurring  
22 after the date of enactment of this Act that may have been  
23 a violation of standards issued by the Environmental Pro-  
24 tection Agency under the Clean Air Act (42 U.S.C. 7401  
25 et seq.), relating to asbestos as a hazardous air pollutant,

1 the Administrator shall refer the matter in writing within  
2 30 days after receiving that information to the Adminis-  
3 trator of the Environmental Protection Agency and the  
4 United States attorney for possible criminal and civil pen-  
5 alties, including those under section 113 of the Clean Air  
6 Act (42 U.S.C. 7413), and to the appropriate State au-  
7 thority with jurisdiction to investigate asbestos matters.

8 (c) OCCUPATIONAL EXPOSURE.—If the Adminis-  
9 trator receives information concerning conduct occurring  
10 after the date of enactment of this Act that may have been  
11 a violation of standards issued by the Occupational Safety  
12 and Health Administration under the Occupational Safety  
13 and Health Act of 1970 (29 U.S.C. 651 et seq.), relating  
14 to occupational exposure to asbestos, the Administrator  
15 shall refer the matter in writing within 30 days after re-  
16 ceiving that information and refer the matter to the Sec-  
17 retary of Labor or the appropriate State agency with au-  
18 thority to enforce occupational safety and health stand-  
19 ards, for investigation for possible civil or criminal pen-  
20 alties under section 17 of the Occupational Safety and  
21 Health Act of 1970 (29 U.S.C. 666).

22 (d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL  
23 VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBES-  
24 TOS.—Section 17(e) of the Occupational Safety and  
25 Health Act of 1970 (29 U.S.C. 656(e)) is amended—

1           (1) by striking “Any” and inserting “(1) Ex-  
2           cept as provided in paragraph (2), any”; and

3           (2) by adding at the end the following:

4           “(2) Any employer who willfully violates any standard  
5           issued under section 6 with respect to the control of occu-  
6           pational exposure to asbestos, shall upon conviction be  
7           punished by a fine in accordance with section 3571 of title  
8           18, United States Code, or by imprisonment for not more  
9           than 5 years, or both, except that if the conviction is for  
10          a violation committed after a first conviction of such per-  
11          son, punishment shall be by a fine in accordance with sec-  
12          tion 3571 of title 18, United States Code, or by imprison-  
13          ment for not more than 10 years, or both.”.

14          (e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND  
15          BY EPA AND OSHA ASBESTOS VIOLATORS.—

16               (1) IN GENERAL.—The Administrator shall as-  
17               sess employers or other individuals determined to  
18               have violated asbestos statutes, standards, or regula-  
19               tions administered by the Department of Labor, the  
20               Environmental Protection Agency, and their State  
21               counterparts, for contributions to the Asbestos In-  
22               jury Claims Resolution Fund (in this section re-  
23               ferred to as the “Fund”).

24               (2) IDENTIFICATION OF VIOLATORS.—Each  
25               year, the Administrator shall—

1 (A) in consultation with the Assistant Sec-  
2 retary of Labor for Occupational Safety and  
3 Health, identify all employers that, during the  
4 previous year, were subject to final orders find-  
5 ing that they violated standards issued by the  
6 Occupational Safety and Health Administration  
7 for control of occupational exposure to asbestos  
8 (29 C.F.R. 1910.1001, 1915.1001, and  
9 1926.1101) or the equivalent asbestos stand-  
10 ards issued by any State under section 18 of  
11 the Occupational Safety and Health Act (29  
12 U.S.C. 668); and

13 (B) in consultation with the Administrator  
14 of the Environmental Protection Agency, iden-  
15 tify all employers or other individuals who, dur-  
16 ing the previous year, were subject to final or-  
17 ders finding that they violated asbestos regula-  
18 tions administered by the Environmental Pro-  
19 tection Agency (including the National Emis-  
20 sions Standard for Asbestos established under  
21 the Clean Air Act (42 U.S.C. 7401 et seq.), the  
22 asbestos worker protection standards estab-  
23 lished under part 763 of title 40, Code of Fed-  
24 eral Regulations, and the regulations banning

1 asbestos promulgated under section 501 of this  
2 Act), or equivalent State asbestos regulations.

3 (3) ASSESSMENT FOR CONTRIBUTION.—The  
4 Administrator shall assess each such identified em-  
5 ployer or other individual for a contribution to the  
6 Fund for that year in an amount equal to—

7 (A) 2 times the amount of total penalties  
8 assessed for the first violation of occupational  
9 health and environmental statutes, standards,  
10 or regulations;

11 (B) 4 times the amount of total penalties  
12 for a second violation of such statutes, stand-  
13 ards, or regulations; and

14 (C) 6 times the amount of total penalties  
15 for any violations thereafter.

16 (4) LIABILITY.—Any assessment under this  
17 subsection shall be considered a liability under this  
18 Act.

19 (5) PAYMENTS.—Each such employer or other  
20 individual assessed for a contribution to the Fund  
21 under this subsection shall make the required con-  
22 tribution to the Fund within 90 days of the date of  
23 receipt of notice from the Administrator requiring  
24 payment.

1           (6) ENFORCEMENT.—The Administrator is au-  
2           thorized to bring a civil action under section 223(c)  
3           against any employer or other individual who fails to  
4           make timely payment of contributions assessed  
5           under this section.

6           (f) REVIEW OF FEDERAL SENTENCING GUIDELINES  
7           FOR ENVIRONMENTAL CRIMES RELATED TO ASBES-  
8           TOS.—Under section 994 of title 28, United States Code,  
9           and in accordance with this section, the United States  
10          Sentencing Commission shall review and amend, as appro-  
11          priate, the United States Sentencing Guidelines and re-  
12          lated policy statements to ensure that—

13               (1) appropriate changes are made within the  
14               guidelines to reflect any statutory amendments that  
15               have occurred since the time that the current guide-  
16               line was promulgated;

17               (2) the base offense level, adjustments, and spe-  
18               cific offense characteristics contained in section  
19               2Q1.2 of the United States Sentencing Guidelines  
20               (relating to mishandling of hazardous or toxic sub-  
21               stances or pesticides; recordkeeping, tampering, and  
22               falsification; and unlawfully transporting hazardous  
23               materials in commerce) are increased as appropriate  
24               to ensure that future asbestos-related offenses re-  
25               flect the seriousness of the offense, the harm to the

1 community, the need for ongoing reform, and the  
2 highly regulated nature of asbestos;

3 (3) the base offense level, adjustments, and spe-  
4 cific offense characteristics are sufficient to deter  
5 and punish future activity and are adequate in cases  
6 in which the relevant offense conduct—

7 (A) involves asbestos as a hazardous or  
8 toxic substance; and

9 (B) occurs after the date of enactment of  
10 this Act;

11 (4) the adjustments and specific offense charac-  
12 teristics contained in section 2B1.1 of the United  
13 States Sentencing Guidelines related to fraud, de-  
14 ceit, and false statements, adequately take into ac-  
15 count that asbestos was involved in the offense, and  
16 the possibility of death or serious bodily harm as a  
17 result;

18 (5) the guidelines that apply to organizations in  
19 chapter 8 of the United States Sentencing Guide-  
20 lines are sufficient to deter and punish organiza-  
21 tional criminal misconduct that involves the use,  
22 handling, purchase, sale, disposal, or storage of as-  
23 bestos; and

24 (6) the guidelines that apply to organizations in  
25 chapter 8 of the United States Sentencing Guide-

1 lines are sufficient to deter and punish organiza-  
2 tional criminal misconduct that involves fraud, de-  
3 ceit, or false statements against the Office of Asbes-  
4 tos Disease Compensation.

5 **SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.**

6 (a) DENIAL, TERMINATION, OR ALTERATION OF  
7 HEALTH COVERAGE.—No health insurer offering a health  
8 plan may deny or terminate coverage, or in any way alter  
9 the terms of coverage, of any claimant or the beneficiary  
10 of a claimant, on account of the participation of the claim-  
11 ant or beneficiary in a medical monitoring program under  
12 this Act, or as a result of any information discovered as  
13 a result of such medical monitoring.

14 (b) DEFINITIONS.—In this section:

15 (1) HEALTH INSURER.—The term “health in-  
16 surer” means—

17 (A) an insurance company, healthcare  
18 service contractor, fraternal benefit organiza-  
19 tion, insurance agent, third-party administrator,  
20 insurance support organization, or other person  
21 subject to regulation under the laws related to  
22 health insurance of any State;

23 (B) a managed care organization; or



1 (C) an employee welfare benefit plan regu-  
2 lated under the Employee Retirement Income  
3 Security Act of 1974 (29 U.S.C. 1001 et seq.).

4 (2) HEALTH PLAN.—The term “health plan”  
5 means—

6 (A) a group health plan (as such term is  
7 defined in section 607 of the Employee Retire-  
8 ment Income Security Act of 1974 (29 U.S.C.  
9 1167)), and a multiple employer welfare ar-  
10 rangement (as defined in section 3(4) of such  
11 Act) that provides health insurance coverage; or

12 (B) any contractual arrangement for the  
13 provision of a payment for healthcare, including  
14 any health insurance arrangement or any ar-  
15 rangement consisting of a hospital or medical  
16 expense incurred policy or certificate, hospital  
17 or medical service plan contract, or health  
18 maintenance organizing subscriber contract.

19 (c) CONFORMING AMENDMENTS.—

20 (1) ERISA.—Section 702(a)(1) of the Em-  
21 ployee Retirement Income Security Act of 1974 (29  
22 U.S.C. 1182(a)(1)), is amended by adding at the  
23 end the following:

1 “(I) Participation in a medical monitoring  
 2 program under the Fairness in Asbestos Injury  
 3 Resolution Act of 2006.”.

4 (2) PUBLIC SERVICE HEALTH ACT.—Section  
 5 2702(a)(1) of the Public Health Service Act (42  
 6 U.S.C. 300gg–1(a)(1)) is amended by adding at the  
 7 end the following:

8 “(I) Participation in a medical monitoring  
 9 program under the Fairness in Asbestos Injury  
 10 Resolution Act of 2006.”.

11 (3) INTERNAL REVENUE CODE OF 1986.—Sec-  
 12 tion 9802(a)(1) of the Internal Revenue Code of  
 13 1986 is amended by adding at the end the following:

14 “(I) Participation in a medical monitoring  
 15 program under the Fairness in Asbestos Injury  
 16 Resolution Act of 2006.”.

## 17 **TITLE V—ASBESTOS BAN**

### 18 **SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PROD-** 19 **UCTS.**

20 (a) IN GENERAL.—Title II of the Toxic Substances  
 21 Control Act (15 U.S.C. 2641 et seq.) is amended—

22 (1) by inserting before section 201 (15 U.S.C.  
 23 2641) the following:

24 **“Subtitle A—General Provisions”;**

25 and

(2) by adding at the end the following:

**“Subtitle B—Ban of Asbestos  
Containing Products**

**“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.**

“(a) DEFINITIONS.—In this chapter:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) ASBESTOS.—The term ‘asbestos’ includes—

“(A) chrysotile;

“(B) amosite;

“(C) crocidolite;

“(D) tremolite asbestos;

“(E) winchite asbestos;

“(F) richterite asbestos;

“(G) anthophyllite asbestos;

“(H) actinolite asbestos;

“(I) asbestiform amphibole minerals; and

“(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

“(3) ASBESTOS CONTAINING PRODUCT.—The term ‘asbestos containing product’ means any prod-

1       uct (including any part) to which asbestos is delib-  
 2       erately or knowingly added or used because the spe-  
 3       cific properties of asbestos are necessary for product  
 4       use or function. Under no circumstances shall the  
 5       term ‘asbestos containing product’ be construed to  
 6       include products that contain de minimus levels of  
 7       naturally occurring asbestos as defined by the Ad-  
 8       ministrator not later than 1 year after the date of  
 9       enactment of this chapter.

10           “(4) DISTRIBUTE IN COMMERCE.—The term  
 11       ‘distribute in commerce’—

12           “(A) has the meaning given the term in  
 13       section 3 of the Toxic Substances Control Act  
 14       (15 U.S.C. 2602); and

15           “(B) shall not include—

16           “(i) an action taken with respect to  
 17       an asbestos containing product in connec-  
 18       tion with the end use of the asbestos con-  
 19       taining product by a person that is an end  
 20       user, or an action taken by a person who  
 21       purchases or receives a product, directly or  
 22       indirectly, from an end user; or

23           “(ii) distribution of an asbestos con-  
 24       taining product by a person solely for the  
 25       purpose of disposal of the asbestos con-

1                   taining product in compliance with applica-  
2                   ble Federal, State, and local requirements.

3           “(b) IN GENERAL.—Subject to subsection (c), the  
4 Administrator shall promulgate—

5                   “(1) not later than 1 year after the date of en-  
6 actment of this chapter, proposed regulations that—

7                           “(A) prohibit persons from manufacturing,  
8 processing, or distributing in commerce asbes-  
9 tos containing products; and

10                           “(B) provide for implementation of sub-  
11 sections (c) and (d); and

12                   “(2) not later than 2 years after the date of en-  
13 actment of this chapter, final regulations that, effec-  
14 tive 60 days after the date of promulgation, prohibit  
15 persons from manufacturing, processing, or distrib-  
16 uting in commerce asbestos containing products.

17           “(c) EXEMPTIONS.—

18                   “(1) IN GENERAL.—Any person may petition  
19 the Administrator for, and the Administrator may  
20 grant, an exemption from the requirements of sub-  
21 section (b), if the Administrator determines that—

22                           “(A) the exemption would not result in an  
23 unreasonable risk of injury to public health or  
24 the environment; and

1           “(B) the person has made good faith ef-  
2           forts to develop, but has been unable to develop,  
3           a substance, or identify a mineral that does not  
4           present an unreasonable risk of injury to public  
5           health or the environment and may be sub-  
6           stituted for an asbestos containing product.

7           “(2) TERMS AND CONDITIONS.—Except for an  
8           exception authorized under paragraph (3)(A)(i), an  
9           exemption granted under this subsection shall be in  
10          effect for such period (not to exceed 5 years) and  
11          subject to such terms and conditions as the Adminis-  
12          trator may prescribe.

13          “(3) GOVERNMENTAL USE.—

14               “(A) IN GENERAL.—

15                   “(i) DEPARTMENT OF DEFENSE.—  
16           Nothing in this section or in the regula-  
17           tions promulgated by the Administrator  
18           under subsection (b) shall prohibit or limit  
19           the manufacture, processing, or distribu-  
20           tion in commerce of asbestos containing  
21           products by or for the Department of De-  
22           fense or the use of asbestos containing  
23           products by or for the Department of De-  
24           fense if the Secretary of Defense certifies  
25           (or recertifies within 10 years of a prior

1 certification), and provides a copy of the  
2 certification to Congress, that—

3 “(I) use of asbestos containing  
4 product is necessary to the critical  
5 functions of the Department, which  
6 includes the use of the asbestos con-  
7 taining product in any weaponry,  
8 equipment, aircraft, vehicles, or other  
9 classes or categories of property which  
10 are owned or operated by the Armed  
11 Forces of the United States (including  
12 the Coast Guard) or by the National  
13 Guard of any State and which are  
14 uniquely military in nature;

15 “(II) no reasonably available and  
16 equivalent alternatives to the asbestos  
17 containing product exist for the in-  
18 tended purpose; and

19 “(III) use of the asbestos con-  
20 taining product will not result in a  
21 known unreasonable risk to health or  
22 the environment.

23 “(ii) NATIONAL AERONAUTICS AND  
24 SPACE ADMINISTRATION.—The Adminis-  
25 trator of the Environmental Protection

1 Agency shall provide an exemption from  
2 the requirements of subsection (b), without  
3 review or limit on duration, if such exemp-  
4 tion for an asbestos containing product is  
5 sought by the Administrator of the Na-  
6 tional Aeronautics and Space Administra-  
7 tion and the Administrator of the National  
8 Aeronautics and Space Administration cer-  
9 tifies, and provides a copy of that certifi-  
10 cation to Congress, that—

11 “(I) the asbestos containing  
12 product is necessary to the critical  
13 functions of the National Aeronautics  
14 and Space Administration;

15 “(II) no reasonable alternatives  
16 to the asbestos containing product  
17 exist for the intended purpose; and

18 “(III) the use of the asbestos  
19 containing product will not result in  
20 an unreasonable risk to health or the  
21 environment.

22 “(B) ADMINISTRATIVE PROCEDURE ACT.—

23 Any certification required under subparagraph  
24 (A) shall not be subject to chapter 5 of title 5,



1 United States Code (commonly referred to as  
2 the ‘Administrative Procedure Act’).

3 “(4) SPECIFIC EXEMPTIONS.—The following  
4 are exempted:

5 “(A) Asbestos diaphragms for use in the  
6 manufacture of chlor-alkali and the products  
7 and derivative therefrom.

8 “(B) Roofing cements, coatings, and  
9 mastics utilizing asbestos that is totally encap-  
10 sulated with asphalt, subject to a determination  
11 by the Administrator of the Environmental Pro-  
12 tection Agency under paragraph (5).

13 “(5) ENVIRONMENTAL PROTECTION AGENCY  
14 REVIEW.—

15 “(A) REVIEW IN 18 MONTHS.—Not later  
16 than 18 months after the date of enactment of  
17 this chapter, the Administrator of the Environ-  
18 mental Protection Agency shall complete a re-  
19 view of the exemption for roofing cements, coat-  
20 ings, and mastics utilizing asbestos that are to-  
21 tally encapsulated with asphalt to determine  
22 whether—

23 “(i) the exemption would result in an  
24 unreasonable risk of injury to public health  
25 or the environment; and

1                   “(ii) there are reasonable, commercial  
2                   alternatives to the roofing cements, coat-  
3                   ings, and mastics utilizing asbestos that is  
4                   totally encapsulated with asphalt.

5                   “(B) REVOCATION OF EXEMPTION.—Upon  
6                   completion of the review, the Administrator of  
7                   the Environmental Protection Agency shall have  
8                   the authority to revoke the exemption for the  
9                   products exempted under paragraph (4)(B), if  
10                  warranted.

11               “(d) DISPOSAL.—

12               “(1) IN GENERAL.—Except as provided in para-  
13               graph (2), not later than 3 years after the date of  
14               enactment of this chapter, each person that pos-  
15               sesses an asbestos containing product that is subject  
16               to the prohibition established under this section shall  
17               dispose of the asbestos containing product, by a  
18               means that is in compliance with applicable Federal,  
19               State, and local requirements.

20               “(2) EXEMPTION.—Nothing in paragraph (1)—

21               “(A) applies to an asbestos containing  
22               product that—

23               “(i) is no longer in the stream of com-  
24               merce; or

1 “(ii) is in the possession of an end  
 2 user or a person who purchases or receives  
 3 an asbestos containing product directly or  
 4 indirectly from an end user; or

5 “(B) requires that an asbestos containing  
 6 product described in subparagraph (A) be re-  
 7 moved or replaced.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
 9 The table of contents in section 1 of the Toxic Substances  
 10 Control Act (15 U.S.C. prec. 2601) is amended—

11 (1) by inserting before the item relating to sec-  
 12 tion 201 the following:

“Subtitle A—General Provisions”;

13 and

14 (2) by adding at the end of the items relating  
 15 to title II the following:

“Subtitle B—Ban of Asbestos Containing Products

“Sec. 221. Ban of asbestos containing products.”.

16 **SEC. 502. NATURALLY OCCURRING ASBESTOS.**

17 (a) STUDY.—

18 (1) IN GENERAL.—Not later than 12 months  
 19 after the date of enactment of this Act, the Adminis-  
 20 trator of the Environmental Protection Agency  
 21 shall—

22 (A) conduct a study to assess the risks of  
 23 exposure to naturally occurring asbestos, in-

cluding the appropriateness of the existing risk assessment values for asbestos and methods of assessing exposure; and

(B) submit a report that contains a detailed statement of the findings and conclusions of such study to—

(i) the majority and minority leaders of the Senate;

(ii) the Speaker and the minority leader of the House of Representatives; and

(iii) the relevant committees of jurisdiction of the Senate and House of Representatives, including—

(I) the Environment and Public Works Committee of the Senate;

(II) the Appropriations Committee of the Senate;

(III) the Judiciary Committee of the Senate;

(IV) the Energy and Commerce Committee of the House of Representatives;

(V) the Judiciary Committee of the House of Representatives; and

1 (VI) the Appropriations Com-  
2 mittee of the House of Representa-  
3 tives.

4 (2) DEVELOPMENT REQUIREMENTS.—

5 (A) IN GENERAL.—Not later than 18  
6 months after the date of enactment of this Act,  
7 the Administrator of the Environmental Protec-  
8 tion Agency, in consultation with appropriate  
9 Federal and State agencies and other interested  
10 parties after appropriate notice, shall establish  
11 dust management guidelines, and model State  
12 regulations that States can choose to adopt, for  
13 commercial and residential development, and  
14 road construction in areas where naturally oc-  
15 ccurring asbestos is present and considered a  
16 risk. Such dust management guidelines may at  
17 a minimum incorporate provisions consistent  
18 with the relevant California Code of Regulation  
19 (17 C.C.R. 93105–06).

20 (B) DUST MANAGEMENT GUIDELINES.—  
21 Guidelines under this paragraph shall include—

22 (i) site management practices to mini-  
23 mize the disturbance of naturally occurring  
24 asbestos and contain asbestos mobilized  
25 from the source at the development site;

- 1                   (ii) air and soil monitoring programs  
2                   to assess asbestos exposure levels at the  
3                   development site and to determine whether  
4                   asbestos is migrating from the site; and  
5                   (iii) appropriate disposal options for  
6                   asbestos-containing materials to be re-  
7                   moved from the site during development.

8           (b) TESTING PROTOCOLS.—

9                   (1) IN GENERAL.—Not later than 18 months  
10                  after the date of enactment of this Act, the Adminis-  
11                  trator of the Environmental Protection Agency, in  
12                  consultation with appropriate State agencies, shall  
13                  establish comprehensive protocols for testing for the  
14                  presence of naturally occurring asbestos.

15                  (2) PROTOCOLS.—The protocols under this sub-  
16                  section shall address both ambient air monitoring  
17                  and activity-based personal sampling and include—

18                          (A) suggested sampling devices and guide-  
19                          lines to address the issues of methods com-  
20                          parability, sampler operation, performance spec-  
21                          ifications, and quality control and quality assur-  
22                          ance;

23                          (B) a national laboratory and air sampling  
24                          accreditation program for all methods of anal-

1           yses of air and soil for naturally occurring as-  
2           bestos;

3           (C) recommended laboratory analytical  
4           procedures, including fiber types, fiber lengths,  
5           and fiber aspect ratios; and

6           (D) protocols for collecting and analyzing  
7           aggregate and soil samples for asbestos content,  
8           including proper and consistent sample prepara-  
9           tion practices suited to the activity likely to  
10          occur on the soils of the study area.

11       (c) EXISTING BUILDINGS AND AREAS.—Not later  
12       than 1 year after the date of enactment of this Act, the  
13       Administrator of the Environmental Protection Agency  
14       shall issue public education materials, recommended best  
15       management practices and recommended remedial meas-  
16       ures for areas containing naturally occurring asbestos in-  
17       cluding existing—

18           (1) schools and parks; and

19           (2) commercial and residential development.

20       (d) MAPPING.—The Secretary of the Interior shall—

21           (1) acquire infrared mapping data for naturally  
22           occurring asbestos, prioritizing California counties  
23           experiencing rapid population growth;

24           (2) process that data into map images; and

1           (3) collaborate with the California Geological  
2       Survey and any other appropriate State agencies in  
3       producing final maps of asbestos zones.

4       (e) RESEARCH GRANTS.—The Director of the Na-  
5       tional Institutes of Health shall administer 1 or more re-  
6       search grants to qualified entities for studies that focus  
7       on better understanding the health risks of exposure to  
8       naturally occurring asbestos. Grants under this subsection  
9       shall be awarded through a competitive peer-reviewed,  
10      merit-based process.

11      (f) TASK FORCE PARTICIPATION.—Representatives  
12      of Region IX of the United States Environmental Protec-  
13      tion Agency, and the Agency for Toxic Substances and  
14      Disease Registry of the United States Department of  
15      Health and Human Services shall participate in any task  
16      force convened by the State of California to evaluate poli-  
17      cies and adopt guidelines for the mitigation of risks associ-  
18      ated with naturally occurring asbestos.

19      (g) MATCHING GRANTS.—The Administrator of the  
20      Environmental Protection Agency is authorized to award  
21      50 percent matching Federal grants to States and munici-  
22      palities. Not later than 4 months after the date of enact-  
23      ment of this Act, the Administrator of the Environmental  
24      Protection Agency shall establish criteria to award such  
25      grants—



1           (1) for monitoring and remediation of naturally  
2       occurring asbestos—

3           (A) at schools, parks, and other public  
4       areas; and

5           (B) in serpentine aggregate roads gener-  
6       ating significant public exposure; and

7           (2) for development, implementation, and en-  
8       forcement of State and local dust management regu-  
9       lations concerning naturally occurring asbestos, pro-  
10      vided that after the Administrator has issued model  
11      State regulations under subsection (a)(2), such State  
12      and local regulations shall be at least as protective  
13      as the model regulations to be eligible for the match-  
14      ing grants.

15      (h) AVAILABILITY OF FUNDS.—An amount of  
16      \$40,000,000 from the Fund shall be made available to  
17      carry out the requirements of this section, including up  
18      to \$9,000,000 for the Secretary of the Interior to carry  
19      out subsection (d), up to \$4,000,000 for the Director of  
20      the National Institutes of Health to carry out subsection  
21      (e), and the remainder for the Administrator of the Envi-  
22      ronmental Protection Agency, at least \$15,000,000 of  
23      which shall be used for the matching grants under sub-  
24      section (g).

25      (i) CONSTRUCTION.—

1           (1) GUIDELINES AND PROTOCOLS.—The guide-  
2       lines and protocols issued by the Administrator of  
3       the Environmental Protection Agency under the spe-  
4       cific authorities in subsections (a), (b), and (c) shall  
5       be construed as nonbinding best practices unless  
6       adopted as a mandatory requirement by a State or  
7       local government. Notwithstanding the preceding  
8       sentence, accreditation for testing will not be grant-  
9       ed except in accordance with the guidelines issued  
10      under subsection (b)(2)(B).

11          (2) FEDERAL CAUSES OF ACTION.—This sec-  
12      tion shall not be construed as creating any new Fed-  
13      eral cause of action for civil, criminal, or punitive  
14      damages.

15          (3) FEDERAL CLAIMS.—This section shall not  
16      be construed as creating any new Federal claim for  
17      injunctive or declaratory relief against a State, local,  
18      or private party.

19          (4) STATES AND LOCALITIES.—Nothing in this  
20      section shall limit the authority of States or local-  
21      ities concerning naturally occurring asbestos.



Calendar No. 460

109TH CONGRESS  
2D Session  
**S. 3274**

**A BILL**

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

JUNE 5, 2006

Read the second time and placed on the calendar